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The Limited Liquidates

By: Alex Brent & Dixon Babb

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Cast of Characters

The debtors – Limited Stores Company, LLC; Limited Stores, LLC; The Limited Stores GC, LLC (collectively “The Limited”)

Parties Directly Associated with The Limited

Leslie Wexner – The founder and original owner of The Limited who sold it to Sun Capital in 2010.

Sun Capital, Inc. – A private equity firm that purchased The Limited from Leslie Wexner in its entirety in 2010. Sun Capital, Inc. presided over The Limited at the time of its chapter 11 filing.

Lee Peterson – A former executive at The Limited who attributed its failure to poor decision-making rather than decreased mall traffic.

Timothy Boates – The Limited’s Chief Restructuring Officer.

Professionals The Limited Retained During the Chapter 11 Proceeding

Klehr Harrison Harvey Branzburg LLP – The lead counsel for The Limited throughout the chapter 11 proceedings.

Guggenheim Securities, LLC – Guggenheim served as the investment banker for The Limited.

Donlin, Recano & Company, Inc. – The administrative agent for The Limited throughout the chapter 11 proceedings.

RAS Management Advisors, LLC – The crisis management firm that The Limited employed by to aid Timothy Boates in financial advisory and restructuring-related services.

Ordinary Course Professionals Included:

Greenberg Traurig
Ice Miller LLP
Indirect Tax Solutions
KPMG
Law Officers of Craig Fullen
Powers Law Group

Parties to the DIP Financing

Cerberus Business Finance, LLC – Initially a prepetition lender that became the DIP Agent following the execution of the DIP Loan Documents. Cerberus was one of many DIP Lenders.

TradeGlobal, LLC – TradeGlobal objected to DIP Financing on the grounds that it had previously secured a warehouse lien as a result of a prior agreement with The Limited.

Parties to the 363 Sale (“the Sale”)

Limited IP Acquisition, LLC – An affiliate of Sycamore Partners that agreed to purchase The Limited’s Intellectual Property and certain related e-commerce.

Sunrise Creditors – Sunrise objected to the Sale because it believed that its affiliate, Sunrise Brands, placed a superior bid.

Official Committee of Unsecured Creditors – The Committee objected to the Bid Protections proposed by The Limited.

Parties to the Liquidation Plan

UMB Bank – UMB Bank served as the Plan Trustee under the Second Modified Plan.

Jung W. Song – Song was the Managing Director of Donlin, Recano & Company, Inc. who submitted a declaration in support of the voting and tabulation procedures.

Unsecured Creditors

Official Committee of Unsecured Creditors – This group represented the interests of the general unsecured creditors and included LF Centennial PTE LTD, LLS Freight (a.k.a. Mast Logistics Services, Inc.), Tru Fragrance & Beauty LLC, Simon Property Group, Inc., and GGP Limited Partnership.

Largest Unsecured Creditors – LF Centennial PTE LTD; Seven Licensing Co. LLC/aka Sunrise; LLS Freight/aka Mast Global Logistics; US Customs & Border Patrol; United Parcel Service-05436A/87X913; Kenilworth Creations; John Buell; KSC Studio LLC; RDG Global LLC; Sunrise Apparel Group LLC; MGF Sourcing US LLC; TRU Fragrance & Beauty LLC; Salty Inc.; TradeGlobal LLC; C.O. International; Elliot Staples; Innomark Communications; DemandWare Inc.; Arden Jewelry MFG Co.; Rakuten Marketing LLC; Federal Express Corp.; Diane Gilman Jeans LLC/aka Sunrise; International Bullion; Creative Production Resources; Simon Property Group; CDW Direct LLC; GGPLP Real Estate Inc.; Google Inc.; Microsoft Licensing GP; Microsoft Online Inc.; Bernardo Inc.

Introduction

The Limited filed for bankruptcy on January 17th, 2017 after ceasing operations at its brick-and-mortar retail stores and shutting down its e-commerce business. The Limited commenced these chapter 11 proceedings to efficiently consummate the sale of its remaining assets—including its intellectual property—followed by an orderly wind-down of its business.

This paper details The Limited’s successful sale of its intellectual property to an affiliate of Sycamore Partners and provides an example of how a 363 sale can maximize collateral value for secured shareholders in a more expedient fashion than a traditional plan of reorganization. The Sale yielded sufficient proceeds to pay off secured creditors, and The Limited confirmed a plan that would satisfy all claims of secured creditors, while leaving unsecured creditors with less than 1% of the value of their collective claims.

After confirmation of the Plan, The Limited’s estate filed a complaint against Sun Capital, alleging that Sun Capital engaged in a fraudulent transfer involving its prepetition leveraged buyout of the company. These proceedings were unresolved at the time of writing this paper.

“The Limited Liquidates” provides the reader with a broad overview of the chapter 11 bankruptcy process and aims to demonstrate how The Limited and its secured creditors used § 363 of the Bankruptcy Code to accomplish this sale and wind-down.

The Limited’s Pre-Petition History

The Origin Story of The Limited

Leslie H. Wexner was born to succeed in the retail industry. The son of the owners of a small retail clothing store in Columbus, Ohio, Wexner worked for his parents and learned the keys to succeeding in retail from an early age.¹ While working for his parents, Wexner displayed strong business acumen, and expressed his belief that their store could maximize its profits by specializing in sportswear instead of continuing to sell all types of women’s clothing.² Wexner explained his rationale behind this belief years later, stating “[sportswear] was our most profitable line, and my feeling was that if you made money in chocolate ice cream, why sell other flavors?” This way of thinking would prove valuable to both Wexner and The Limited during the company’s birth and subsequent growth.

Wexner left his parents’ store in 1963 due to his father’s refusal to consider limiting inventory to sportswear. Armed with a \$5,000 loan from his aunt and his belief that a store only needed to sell its most profitable styles to succeed, Wexner opened his own retail store in Columbus. Wexner wanted the name of his store to reflect his limited inventory—thus, “The Limited” was born.

Wexner Expands The Limited

Wexner maintained a commitment to success when building his business, working over seventeen hours a day on a consistent basis. His dedication to excellence paid off, as The Limited’s first year sales exceeded \$160,000, allowing Wexner to open two additional stores before the end of his second year of operations. The Limited continued its growth through the 1960s, culminating in an initial public offering of common stock in 1969. The retail stores kept growing after the IPO, and The Limited brand became known for its store presentation. While Wexner knew how to create an excellent in-store experience, he also possessed an ability to meet the ever-changing needs of his customers. When a portion of The Limited’s customer base demanded slightly more expensive styles of clothing, Wexner responded by hiring more high-end designers to fill these needs. Wexner realized his customers wanted these styles quickly, so he purchased a production facility and developed a computerized distribution network that produced his fashion line and placed his garments on The Limited’s racks within a matter of weeks. As The Limited experienced continued success, it became known for these main business principles—an enjoyable in-store experience, styles tailored to customer needs, and expedient

¹ Lbrands, <https://www.lb.com/our-company/our-founder>, (last visited Apr. 16, 2019) <https://perma.cc/RH8Y-MEXT>.

² Leslie Wexner, *Turning Rags Into Riches*, ENTREPRENEUR (Apr. 16, 2019), <https://www.entrepreneur.com/article/197714>, <https://perma.cc/S3X9-FYSL>.

placement of new styles into stores. These principles drove The Limited's success well into the 1980s and 1990s as The Limited expanded into a national chain with over 700 stores.³

Wexner Sells The Limited to Sun Capital

Wexner began exploring additional business avenues during the height of The Limited's success in the 1980s and 1990s. Utilizing his umbrella company ("L Brands"), Wexner acquired and started various apparel chains, including Victoria's Secret, Express, and Limited Too—the latter two chains focused on young women and children.⁴ This left The Limited to cater to the women's professional apparel customer base, a much different consumer segment than the one Wexner initially targeted in 1963. Additionally, The Limited began developing these professional designs through studio-based designers in New York, a contrast from the high-pace production process that garnered so much success. While The Limited designed and sold high-end fashions in the past, its "bread and butter" was always casual clothing that the store could take from production to the sales floor as quickly as possible.

As sales and consumer appeal declined, Wexner and L Brands began to withdraw from the retail space and focus on their more successful brands, rendering The Limited expendable. Additionally, Wexner began to feel overwhelmed by the amount of businesses L Brands controlled, referring to the company's operational structure as a "zoo."⁵ As a result of this pressure, Wexner eventually sold a 75 percent stake in The Limited to Sun Capital, Inc. a private equity firm, in 2007, and later sold the remaining 25 percent to Sun Capital in 2010—the parties did not initially disclose the purchase price.⁶ Sun Capital agreed to invest \$50 million into the business and setup a \$75 million credit facility in an effort to jumpstart the brand. This sale marked the end of Wexner's reign over The Limited and rendered The Limited a wholly separate entity apart from L Brands; it signaled the beginning of Sun Capital's attempt to restore The Limited to its former glory.

³ Daphne Howland, *Why The Limited's Time Finally Ran Out*, RETAIL DIVE (Apr 16, 2019), <https://www.retaildive.com/news/why-the-limiteds-time-finally-ran-out/433850/>, <https://perma.cc/555W-MBFP>.

⁴ *Id.*

⁵ Carlye Adler, *Les Wexner Limited Brands*, CNN MONEY (Apr. 16, 2019), https://money.cnn.com/magazines/fsb/fsb_archive/2003/09/01/350795/, <https://perma.cc/HPW5-AGRR>.

⁶ Declaration of Timothy Boates of Limited Stores Company, LLC, in Support of Debtors' Chapter 11 Petition and First Day Motions [12.pdf](#) at 8, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Declaration of Timothy Boates].

Events Leading to Chapter 11 Filing

The Limited's Version of Events

According to Timothy Boates, The Limited's Chief Restructuring Officer, the challenges that the entire retail industry faced during the rise of internet-based marketplaces ultimately caused The Limited to file for chapter 11 relief.⁷ Boates cited "declining mall traffic, decreased sales, changing trends, expensive leases, and an increased consumer emphasis on internet-based retail" as reasons for The Limited's struggles under Sun Capital ownership.⁸ Throughout his declaration, Boates consistently portrayed The Limited as one of many retailers facing financial challenges amidst the consumer migration to the online marketplace, and he attempted to describe The Limited's problems as issues that affected the retail industry collectively, rather than The Limited alone.

The Limited tried to respond to these challenges by closing many of its brick and mortar stores and expanding its e-commerce channel. Under Wexner's leadership, The Limited operated roughly 750 retail brick and mortar stores across the United States; from the time Sun Capital took ownership in 2007 through the end of 2016, this number shrank to roughly 250 retail locations. The Limited also increased its use of email and focused on developing a social media presence.⁹ However, it continued to struggle financially.

According to Boates, mall traffic decreased 8.3% from 2015 through November 2016, causing The Limited's sales to decline by 15.6% in stores and 8.1% overall—7.9% below the company's 2016 projections.¹⁰ As a company with substantial rent and payroll obligations pertaining to its brick and mortar stores, The Limited depended heavily on mall traffic, and Boates claimed this decrease in traffic contributed to the disappointing sales figures. Additionally, The Limited experienced a "precipitous drop" in EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization) over "the last several years through 2016."¹¹ The Limited's EBITDA "declined approximately 93% from 2015 to 2016, 95% below the company's 2016 projections."¹² These various financial shortcomings rendered The Limited unable to pay its outstanding debt obligations of \$13.4 million discussed *infra*.¹³

⁷ *Id.* at 3.

⁸ *Id.* at 2.

⁹ *Id.* at 8.

¹⁰ *Id.* at 11.

¹¹ *Id.* at 3.

¹² *Id.* at 11.

¹³ *See* Section on DIP Financing.

Facing a large amount of debt and decreasing sales, The Limited began to limit creditor exposure, minimize its operating costs, and preserve liquidity by cancelling inventory orders and reducing its workforce. Additionally, The Limited started exploring the possibility of selling its business.

A Former Employee's Take on The Limited's Financial Struggles

Lee Peterson, who spent eleven years as an executive at The Limited, attributed the company's struggles to poor decision-making and the loss of Wexner instead of blaming decreasing mall traffic.¹⁴ Peterson believed The Limited erred when it decided to shift its focus to the professional women's market. He stated that The Limited "took [its] brand and gave it a different target customer, and it [was] the wrong target customer." According to Peterson, once Wexner and L Brands started pursuing The Limited's original target segment through different entities (such as The Limited Express and The Limited Too), The Limited found itself ill-equipped to serve the remaining professional market. The Limited was set up to succeed by using the fast-based production process Wexner developed, rather than the slower design process necessary to produce more professional products.

Additionally, Peterson believed Wexner's decision to sell The Limited sealed the company's fate. He describes Wexner as a "merchant," and says Wexner taught his employees that they were "merchants-in-training." When Wexner sold to Sun Capital, Peterson thinks The Limited began to gradually lose its employees that possessed both a business mind and good fashion sense—traits Wexner attempted to instill in his employees.

Comparison

Both Boates and Peterson presented plausible explanations, and their explanations are not necessarily mutually exclusive. While both Boates and Peterson likely spoke out of self-interest, leaving out any facts that could cut against their respective stories, it is not improbable that reality aligns with both of their explanations. Boates' statements about decreasing mall traffic are supported by statistics and are not false—consumers have increasingly turned to online shopping platforms in recent years.¹⁵ Peterson, on the other hand, made statements based on eleven years of first-hand experience working with The Limited and Wexner. Nothing in either of their statements appears to contradict the other, they simply appear to emphasize different facts and deliver a different narrative. When looking at the two explanations together, it seems both are plausible—The Limited made poor decisions, lost its leader at a time when it needed to excel in both decision-making and leadership, and suffered cannibalization of its customer base by other L Brands companies.

¹⁴ Howland, *supra* note 3.

¹⁵ Madeline Farber, *A New Survey Shows a Drastic Increase in Online Shopping*, FORTUNE (Apr. 16, 2019), <http://fortune.com/2016/06/08/online-shopping-increases/>, <https://perma.cc/NC5T-QSRX>.

Lawsuit After Confirmation of the Plan

In addition to the explanations of both Boates and Peterson, another possible explanation arose two years after The Limited filed for bankruptcy. As discussed in further detail at the end of this paper, UMB Bank, the eventual Plan Trustee (the “Plan Trustee”), filed an avoidance action on January 17, 2019 alleging that Sun Capital fraudulently transferred \$42,158,299.47 to Sun Capital subsidiaries in violation of § 544(b) of the Bankruptcy Code.¹⁶ The complaint attributes The Limited’s prepetition financial struggles to this alleged fraudulent transfer and seeks to recover the money from Sun Capital and its subsidiaries.

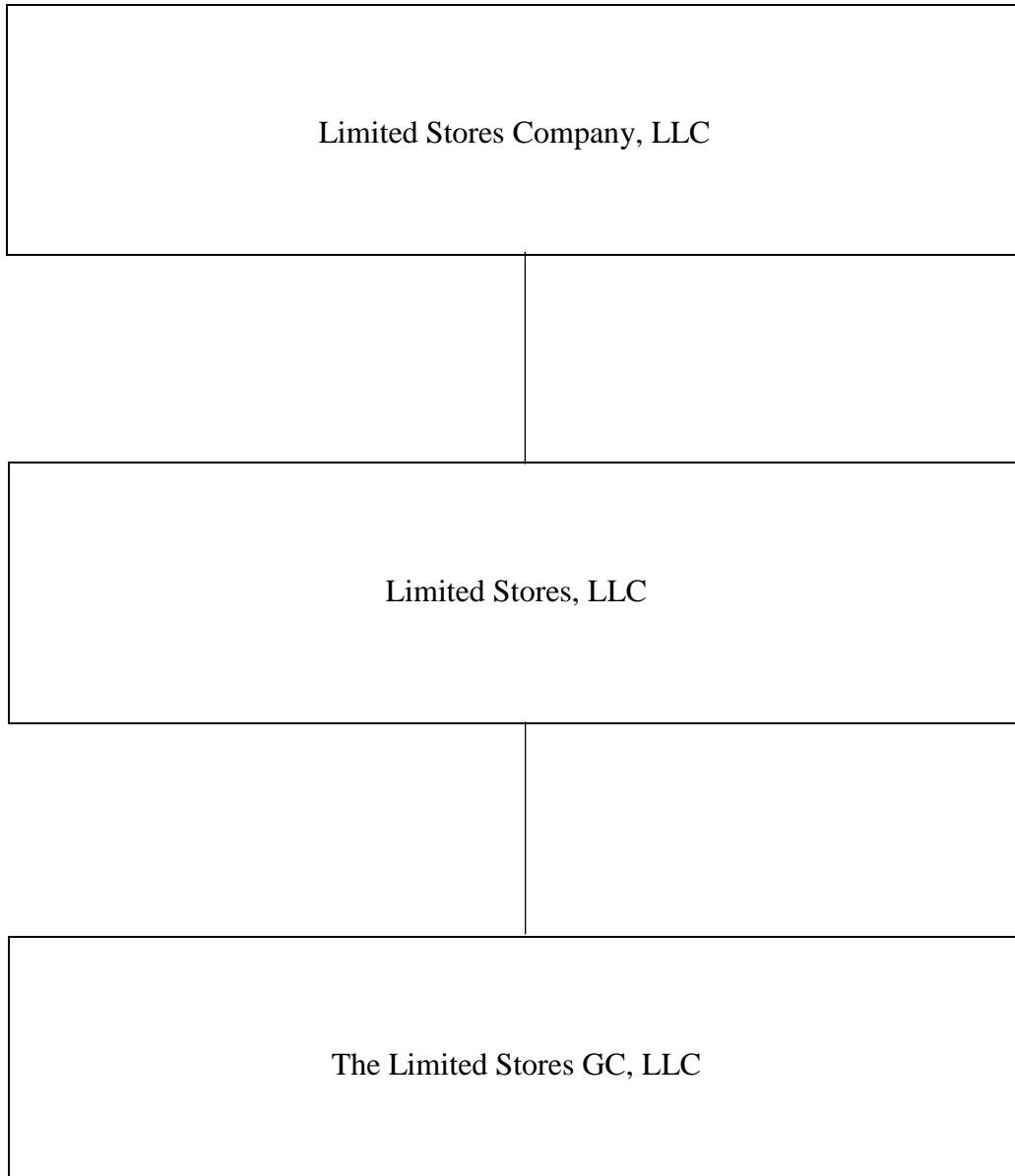
Filing of Chapter 11 Petition

Ultimately, the financial pressures and “significant” debt obligations—whatever their cause—drove The Limited to file for chapter 11 bankruptcy on January 17, 2017 to “effectuate an orderly and efficient liquidation and wind down process.”¹⁷

¹⁶ Original Complaint by UMB Bank Case [1.pdf-New Proceeding](#) at 18, UMB Bank v. Sun Capital Partner 9:19-cv-80074-RLR (S.D. Fla. Filed Jan. 17, 2019) [hereinafter Original LBO Complaint].

¹⁷*Id.* at 11.

The Limited's Prepetition Structure



First Day Motions

On January 17, 2017 (the “Petition Date”), The Limited filed a Voluntary Petition for Non-Individuals Filing for Bankruptcy in the United States Bankruptcy Court for the District of Delaware (the “Voluntary Petition”).¹⁸ The same day, The Limited filed several First Day Motions with the court. First Day Motions can be grouped into three categories: 1) Orders Facilitating the Administration of the Estate; 2) Orders that Smooth Day-to-Day Operations; and 3) Substantive Orders.¹⁹

1. Administration of the Estate

Joint Administration

The Limited Company, LLC, along with Limited Stores Company and The Limited Stores GC, LLC (collectively “The Limited”), first submitted to the court a motion for joint administration, requesting that the court maintain one file and one docket for The Limited and its affiliates.²⁰ The Limited filed this motion pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.²¹ According to Rule 1015(b), if “two or more petitions are pending in the same court by or against . . . a Debtor and an affiliate, the court may order a joint administration of the estates.”²² Additionally, Local Rule 1015-1 provided further support for the motion, allowing relief when joint administration will “ease the administrative burden for the court and the parties.”²³ Due to the “integrated nature” of The Limited’s operations, The Limited asserted that joint administration of the estate would reduce the fees and costs of administration without harming the interests of any of the involved parties.²⁴ The court granted The Limited’s motion.²⁵

¹⁸ Voluntary Petition for Non-Individuals Filing for Bankruptcy [1.pdf](#), *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Voluntary Petition].

¹⁹ MICHAEL L. BERNSTEIN & GEORGE W. KUNEY, BANKRUPTCY IN PRACTICE 273–274 (Charles J. Tabb ed., 5th ed. 2015).

²⁰ Debtors’ Motion for Entry of an Order (I) Directing Joint Administration of Their Related Chapter 11 Cases and (II) Granting Related Relief [3.pdf](#) at 1, *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Motion for Joint Administration].

²¹ *Id.* at 2.

²² FED. R. BANKR. P. 1015(b) <https://perma.cc/DZV8-N69P>.

²³ Motion for Joint Administration, *supra* note 20, [3.pdf](#) at 4.

²⁴ Declaration of Timothy D. Boates, *supra* note 6, [12.pdf](#) at 15.

²⁵ Order (I) Directing Joint Administration of the Debtor’s Related Chapter 11 Cases and (II) Granted Related Relief [56.pdf](#) at 1, *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

Claims and Noticing Agent

Next, The Limited filed an application to appoint Donlin, Recano & Co. (“Donlin, Recano”) as claims and noticing agent, instead of using the Delaware bankruptcy clerk.²⁶ The court allowed the application, allowing Donlin Recano to relieve the clerk of “the administrative burden of processing . . . an overwhelming number of claims.”²⁷

Consolidated Creditors

In the interest of administrative convenience, The Limited also filed a motion to file a consolidated list of creditors, rather than submitting a separate mailing matrix for each debtor, as required by Local Rule 2002-1(f)(v).²⁸ The court granted this motion.²⁹

Cash Management System

The Limited further addressed administrative convenience by filing a motion to continue using its cash management system.³⁰ The Limited moved to maintain its seven bank accounts, open new debtor-in-possession accounts, if needed, and to continue to use their existing correspondence and business forms.³¹ Under § 363(c)(1) of the Bankruptcy Code, a cash management system is permitted to continue because the debtor-in-possession may “use property of the estate in the ordinary course without notice or hearing.”³² The Limited believed the “disruption” caused by implementing a new cash management system would harm not only The

²⁶ Debtors’ Application for Entry of an Order, Pursuant to 28 U.S.C. § 156(C), Authorizing the Retention and Appointment of Donlin, Recano & Company, Inc. as Claims and Noticing Agent for the Debtors, Nunc Pro Tunc to the Petition Date [4.pdf](#) at 1, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Appointment of Donlin, Recano & Company].

²⁷ *Id.* at 3; Order Authorizing the Retention and Appointment of Donlin, Recano & Company, Inc. As Claims and Noticing Agent for the Debtors, Nunc. Pro Tunc to the Petition Date [58.pdf](#) at 1–2, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Claims Agent Order].

²⁸ Debtors’ Motion for Entry of an Order (I) Authorizing the Debtors to File a Consolidated List of Creditors in Lieu of Submitting a Separate Mailing Matrix for Each Debtor and (II) Granting Related Relief [5.pdf](#) at 3, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

²⁹ Order (I) Authorizing the Debtors to File a Consolidated List of Creditors in Lieu of Submitting a Separate Mailing Matrix for Each Debtors and (II) Granting Related Relief [59.pdf](#) at 1–2, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

³⁰ Debtors’ Motion for Entry of an Interim and Final Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, and (C) Maintain Existing Business Forms, and (II) Granting Related Relief [7.pdf](#) at 1, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Motion to Operate Cash Management System].

³¹ Declaration of Timothy D. Boates, *supra* note 6, [12.pdf](#) at 19–20.

³² Motion to Operate Cash Management System, *supra* note 30, [7.pdf](#) at 8.

Limited, but all the parties of interest as well.³³ The court agreed and granted an interim order, which was ultimately followed by a final order granting the motion.³⁴

2. Day-to-Day Operations

Utility Services

The Limited filed a motion to prohibit its utility provider from discontinuing services during the chapter 11 proceedings.³⁵ Following the closing of all of its stores, The Limited believed that, at the time, they only obtained utility services from one utility provider.³⁶ The Limited estimated its cost per month at \$30,000. While The Limited maintained other utility services at its headquarters, it paid those costs indirectly through a landlord.

§ 366 of the Bankruptcy Code protects a debtor against the discontinuance of utilities following a chapter 11 filing.³⁷ However, the debtor must give the service provider adequate assurance that the debtor will make payments to the provider.³⁸ In The Limited's motion, it sought to show that the utility provider had adequate assurance of payment because The Limited had no other post-petition obligations to any other utility provider.³⁹ The Limited stated that the utility provider would not receive any adequate assurance of future payment "beyond [The Limited's] ability to meet obligations as they became due."⁴⁰ The Limited also proposed that the court require a utility provider who requested further adequate assurance from The Limited to go through a process (Adequate Assurance Procedure) to ensure that The Limited would be able to

³³ Motion to Operate Cash Management System, *supra* note 30, [7.pdf](#) at 3.

³⁴ Interim Order (I) Authorizing the Debtors to (A) Continue to Operate the Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, and (C) Maintain Existing Business Forms, and (II) Granting Related Relief [61.pdf](#) at 1–2, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017); Final Order (I) Authorizing the Debtors to (A) Continue to Operate the Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, and (C) Maintain Existing Business Forms, and (II) Granting Related Relief [230.pdf](#) at 1, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

³⁵ Debtors' Motion for Entry of Interim and Final Orders (I) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (II) Determining Adequate Assurance of Payment for Future Utility Services, (III) Establishing Procedures for Determining Adequate Assurance of Payment, and (IV) Granting Related Relief [9.pdf](#) at 1, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Motion to Continue Utility Services].

³⁶ *Id.* at 3.

³⁷ *Id.* at 6.

³⁸ *Id.*

³⁹ *Id.* at 7.

⁴⁰ *Id.* at 4.

properly address the provider’s concerns along with its chapter 11 obligations.⁴¹ The court issued an interim order prohibiting the utility provider from discontinuing utility services, finding that the utility provider could not request anymore adequate assurance from The Limited, and approving the Adequate Assurance Procedure.⁴² Later, the court entered a final order granting the motion in full.⁴³

3. Prepetition Obligations

Prepetition Employee Claims

The Limited filed a motion to pay and honor certain prepetition employee claims and to continue their employee benefits programs—in their ordinary course—during the proceedings.⁴⁴ On the Petition Date, The Limited employed roughly 50 employees (the “Employees”), all of whom performed “a variety of functions critical to the preservation of value and the administration of the Debtors’ estates.”⁴⁵ The Limited sought to avoid placing undue hardship on the Employees by paying certain prepetition claims and by continuing the Employee Benefits Programs. The Limited moved to pay a total of \$1,035,500 related to the claims and the Employee Benefits Program.⁴⁶

The Limited asserted that it was entitled to relief under § 363 of the Bankruptcy Code, which states that “the debtor, after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.”⁴⁷ Further, § 105(a) allows the court to issue any order that will aid in the bankruptcy proceedings, also referred to as the doctrine of necessity.⁴⁸ The Limited believed that the value of its estate would decrease if it could not pay its

⁴¹ *Id.*

⁴² Interim Order (I) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (II) Determining Adequate Assurance of Payment for Future Utility Services, (III) Establishing Procedures for Determining Adequate Assurance of Payment, and (IV) Granting Related Relief [63.pdf](#) at 1–2, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Interim Utility Order].

⁴³ Final Order (I) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (II) Determining Adequate Assurance of Payment, and (IV) Granting Related Relief [216.pdf](#) at 1–3, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Final Utility Order].

⁴⁴ Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing, but not Directing, the Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs and (II) Granting Related Relief [6.pdf](#) at 1, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Motion to Pay Prepetition Wages].

⁴⁵ *Id.* at 3.

⁴⁶ *Id.* at 5.

⁴⁷ 11 U.S.C. § 363(b)(1) <https://perma.cc/ZG4H-UUNG>.

⁴⁸ 11 U.S.C. § 105(a) <https://perma.cc/HRW4-GYVK>; Motion to Pay Prepetition Wages, *supra* note 44, [6.pdf](#) at 14.

employees' wages because unpaid employees would likely seek alternative employment.⁴⁹ Since employee compensation and benefits are entitled to priority under § 507(a)(4)–(5) of the Bankruptcy Code, granting the relief would only affect when the employees were paid, thus not affecting any recovery for general unsecured creditors.⁵⁰ The court granted this motion on an interim basis, authorizing—but not directing—The Limited to pay prepetition claims and continue the Employee Benefits Program.⁵¹ The court later entered a final order granting this motion.⁵²

Prepetition Taxes and Fees

The Limited filed a motion for entry of an interim and final order, authorizing, but not directing, the payment of certain taxes and fees.⁵³ The Limited sought authorization to pay certain prepetition taxes, which included sales and use taxes, franchise taxes, and other taxes and fees in an amount up to \$3,000,000 on an interim basis and up to \$5,000,000 on a final basis.⁵⁴ The Limited asserted two grounds for relief. First, The Limited contended that many of the taxes and fees were collected by The Limited and held in trust, and thus were not property of its estate under § 541 of the Bankruptcy Code.⁵⁵ Additionally, The Limited no longer had any sales tax liability because they had ceased selling inventory on all platforms.⁵⁶ Because The Limited had ceased selling inventory, The Limited requested that it no longer be responsible for making estimated prepayments of taxes to the appropriate taxing authorities.⁵⁷ The Limited asked to shut off these payments because the estimated prepayment amount was based on past years and would have required The Limited to make payments for periods in which they had no sales, and this

⁴⁹ Motion to Pay Prepetition Wages, *supra* note 44, [6.pdf](#) at 14–15.

⁵⁰ *Id.* at 15.

⁵¹ Interim Order (I) Authorizing, but not Directing, the Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs and (II) Granting Related Relief [60.pdf](#) at 1–2, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Interim Prepetition Wages Order].

⁵² Interim Order (I) Authorizing, But Not Directing, The Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs and (II) Granting Related Relief [215.pdf](#), *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

⁵³ Debtors' Motion for Entry of an Interim and Final Order (I) Authorizing, but not Directing, the Payment of Certain Prepetition Taxes and Fees and (II) Granting Related Relief [8.pdf](#) at 1, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Motion to Pay Prepetition Taxes and Fees].

⁵⁴ *Id.*

⁵⁵ *Id.* at 4–5.

⁵⁶ *Id.* at 5.

⁵⁷ *Id.*

amount would eventually be refunded anyway.⁵⁸ By eliminating the estimated prepayments, The Limited believed it would conserve cash flow.⁵⁹

Second, The Limited asserted that under § 363(b)(1) of the Bankruptcy Code, a court may authorize a debtor to pay certain prepetition claims.⁶⁰ The court may only do so if the debtor shows “that a sound business purpose justifies such action.”⁶¹ To support its contention that there was a sound business purpose, The Limited asserted that if the taxes and fees were not paid, the governmental authorities could have sought to impose penalties against The Limited, which would have hindered the administration of the current action and resulted in increased tax liability for The Limited.⁶² According to The Limited, if it was not authorized to pay its prepetition taxes and fees, then the number of priority claims would have increased, which would have harmed the general unsecured creditors.⁶³

The court granted an interim order authorizing, but not directing, The Limited to pay its prepetition taxes and fees.⁶⁴ A final order was later entered on the same terms.⁶⁵

Prepetition Insurance Policies

The Limited sought the entry of interim and final orders authorizing, but not directing it, to (i) pay prepetition insurance policies, (ii) pay brokerage fees, (iii) maintain, modify, and purchase insurance coverage in the ordinary course of business, and (iv) continue to honor its agreements and pay premiums.⁶⁶ The Limited had seventeen different insurance policies from

⁵⁸ *Id.*

⁵⁹ *Id.* at 6.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 6.

⁶³ *Id.* at 6–7.

⁶⁴ Interim Order (I) Authorizing, but not Directing, the Prepetition Payment of Certain Taxes and Fees and (II) Granting Related Relief [62.pdf](#) at 1–2, *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Interim Prepetition Taxes and Fees Order].

⁶⁵ Final Order (I) Authorizing, but not Directing, the Prepetition Payment of Certain Taxes and Fees and (II) Granting Related Relief [231.pdf](#) at 2–4, *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Final Prepetition Taxes and Fees Order].

⁶⁶ Debtors’ Motion for Entry of an Interim and Final Order (I) Authorizing, but not Directing, the Debtors to (A) Pay Their Obligations Under Insurance Policies Entered Into Prepetition, (B) Continue to Pay Brokerage Fees, (C) Renew, Supplement, Modify, or Purchase Insurance Coverage, and (D) Honor the Terms of the Financing Agreements and Pay Premiums Thereunder, and (II) Granting Related Relief [10.pdf](#) at 1–2, *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Motion to Pay Prepetition Insurance Policies].

multiple different insurance carriers.⁶⁷ It wished to continue to maintain only those insurance policies necessary to The Limited’s continuing operations.⁶⁸ Further, The Limited sought to continue to pay under its financing agreements, which it used to finance its insurance policies.⁶⁹ All the amounts due on the financing agreements—\$104,256 on the Petition Date—would have become due during the chapter 11 proceedings.⁷⁰ In regards to the brokerage fees, The Limited requested to continue its payments of brokers’ fees to Lockton Companies LLC and Marsh.⁷¹ These two brokers were responsible for assisting The Limited in obtaining comprehensive insurance coverage at advantageous rates.⁷² The Limited requested this relief because it believed that it was important to maintain the value of its property and assets, as well as to comply with laws and regulations in the commercial field requiring insurance coverage.⁷³

According to § 363(b) of the Bankruptcy Code, the debtor must show that the use of property is justified by a sound business purpose.⁷⁴ Further, § 105(a) of the Bankruptcy Code codifies a “doctrine of necessity” that allows courts in chapter 11 cases to permit debtors to pay prepetition claims that are not authorized by the Bankruptcy Code. The Limited maintained that it would be able to make these payments out of its expected cash flow, DIP financing, and the anticipated cash collateral.⁷⁵

The court granted an interim order granting the motion.⁷⁶ The court later granted the motion on a final basis.⁷⁷

⁶⁷ *Id.* at 3.

⁶⁸ *Id.*

⁶⁹ *Id.* at 4.

⁷⁰ *Id.*

⁷¹ *Id.* at 5.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at 8.

⁷⁶ Debtors’ Motion for Entry of an Interim and Final Order (I) Authorizing, but not Directing, the Debtors to (A) Pay Their Obligations Under Insurance Policies Entered Into Prepetition, (B) Continue to Pay Brokerage Fees, (C) Renew, Supplement, Modify, or Purchase Insurance Coverage, and (D) Honor the Terms of the Financing Agreements and Pay Premiums Thereunder, and (II) Granting Related Relief [64.pdf](#) at 1–2, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Interim Prepetition Payment of Insurance Policies Order].

⁷⁷ Final Order (I) Authorizing, But Not Directing, the Payment of Certain Prepetition Taxes and Fees and (II) Granting Related Relief [231.pdf](#), *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

Motions to Reject Unexpired Leases and Executory Contracts

Unexpired Leases

The Limited concurrently filed three motions to reject approximately 250 unexpired leases (the “Leases”) in compliance with the 100-lease limit imposed by Federal Rule of Bankruptcy Procedure 6006(f).⁷⁸ Because The Limited closed its roughly 250 brick-and-mortar retail stores prepetition, it sought to preserve value for its estate by rejecting the Leases associated with these stores and avoiding unnecessary rent expenses.⁷⁹

§ 365(a) of the Bankruptcy Code allows a debtor in possession to reject any expired lease subject to court approval.⁸⁰ The decision to reject an unexpired lease is a matter within the “business judgment” of the debtor, and a court should approve a debtor’s decision to reject when this decision would benefit the estate—unless bad faith is present.⁸¹ The Limited stated that it would save roughly \$6.2 million dollars per month in rent and other costs by rejecting the Leases. Without rejection, The Limited argued, it would be forced to pay rent for store locations it no longer possessed or operated.⁸² According to The Limited, the Leases were no longer a “source of potential value” for the estate, and they represented an “unnecessary” drain on the estate’s resources—therefore, the decision to reject the Leases constituted an exercise of The Limited’s sound business judgment.⁸³

⁷⁸ Debtors’ First Omnibus Motion for Entry of an Order (I) Authorizing the Rejection of Certain Unexpired Leases, (II) Authorizing Abandonment of Certain Personal Property, Each Effective *Nunc Pro Tunc* to the Petition Date, and (III) Granting Related Relief (“Debtors’ First Omnibus Motion to Reject Certain Unexpired Leases”) [15.pdf](#), *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Debtors’ First Omnibus Motion to Reject Certain Unexpired Leases]; Debtors’ Second Omnibus Motion for Entry of an Order (I) Authorizing the Rejection of Certain Unexpired Leases, (II) Authorizing the Abandonment of Certain Personal Property, Each Effective *Nunc Pro Tunc* to the Petition Date, and (III) Granting Related Relief [16.pdf](#), *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Debtors’ Second Omnibus Motion to Reject Certain Unexpired Leases]; Debtors’ Third Omnibus Motion for Entry of an Order (I) Authorizing the Rejection of Certain Unexpired Leases, (II) Authorizing Abandonment of Certain Personal Property, Each Effective *Nunc Pro Tunc* to the Petition Date, and (III) Granting Related Relief (“Debtors’ Third Omnibus Motion to Reject Certain Unexpired Leases”) [17.pdf](#), *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Debtors’ Third Omnibus Motion to Reject Certain Unexpired Leases].

⁷⁹ Debtors’ First Omnibus Motion to Reject Certain Unexpired Leases, *supra* note 78, [15.pdf](#) at 4.

⁸⁰ *Id.* at 5; 11 U.S.C. § 365(a) <https://perma.cc/DB5U-R9ZX>.

⁸¹ Debtors’ First Omnibus Motion to Reject Certain Unexpired Leases, *supra* note 78, [15.pdf](#) at 5–6 (citing *Nat’l Labor Relations Bd. v. Bildisco & Bildisco* (*In re Bildisco*), 682 F.2d 72, 79 (3d Cir. 1982); *Glenstone Lodge, Inc. v. Buckhead Am. Corp.* (*In re Buckhead Am. Corp.*), 180 B.R. 83, 88 (Bankr. D. Del.1995); *Lubrizol Enters., Inc. v. Richmond Metal Finishes*, 756 F.2d 1043, 1047 (4th Cir. 1985); *Sharon Steel Corp. v. Nan Fuel Gas Distrib. Corp.* (*In re Sharon Steel Corp.*), 872 F.2d 36, 39-40 (3d Cir. 1989)).

⁸² *Id.* at 4.

⁸³ *Id.* at 6–7.

The Limited also requested the court’s permission to abandon any personal property it left at its store locations pursuant to § 554(a) of the Bankruptcy Code.⁸⁴ § 554(a) allows a debtor—after notice and a hearing—to “abandon any property of the estate that is burdensome . . . or of inconsequential value”⁸⁵ The Limited determined that the costs of removing any remaining personal property would outweigh any benefit to its estate, delay its efforts to reject the Leases, and harm the estate as a result.

Additionally, The Limited moved the court to deem the Leases rejected *Nunc Pro Tunc* (retroactively) to the Petition Date, arguing that § 365 of the Bankruptcy Code authorizes such relief when equity principles weigh in its favor.⁸⁶ The Limited cited to the unnecessary expenses it would incur if the court did not deem the Leases retroactively rejected, its decision to deliver possession to its landlords with a firm statement of surrender and abandonment, and the landlords’ ability to fill the vacant properties in arguing that the equities favored its position.⁸⁷

None of the approximately 250 landlords objected to The Limited’s three motions. Therefore, the court approved each of the three motions in substantially the same form as requested, allowing The Limited to reject the Leases *Nunc Pro Tunc* and abandon its personal property.⁸⁸

⁸⁴ *Id.* at 7.

⁸⁵ 11 U.S.C. § 554(a). <https://perma.cc/L4YW-CB7P> (Note: The Bankruptcy Code uses the term trustee, but the court had not yet appointed a trustee.)

⁸⁶ Debtors’ First Omnibus Motion to Reject Certain Unexpired Leases, *supra* note 78, [15.pdf](#) at 8 (citing *In re Jamesway Corp.*, 179 B.R. 33, 37 (S.D.N.Y. 1995) (stating that § 365 does not include “restrictions as to the manner in which the court can approve rejection”); *In re CCI Wireless, LLC*, 297 B.R. 133, 138 (D. Colo. 2003) (noting that § 365 “does not prohibit the bankruptcy court from allowing the rejection of [leases] to apply retroactively”); *In re Thinking Machs. Corp.*, 67 F.3d 1021, 1028–29 (1st. Cir. 1995) (stating “rejection under § 365(a) does not take effect until judicial approval is secured, but the approving court has the equitable power, in suitable cases, to order a rejection to operate retroactively”); *In re Chi-Chi’s, Inc.*, 305 B.R. 396, 399 (Bankr. D. Del. 2004) (stating “the court’s power to grant retroactive relief is derived from the bankruptcy court’s equitable powers so long as it promotes the purposes of § 365(a)”; *CCI Wireless*, 297 B.R. at 140 (holding that a “court has authority under § 365(d)(3) to set the effective date of rejection at least as early as the filing date of the motion to reject”); *BP Energy Co. v. Bethlehem Steel Corp.*, 2002 WL 31548723, at *3 (S.D.N.Y. Nov. 15, 2002) (“We cannot conclude . . . that a bankruptcy court’s assignment of a retroactive rejection date falls outside of its authority when the balance of the equities favors this solution”)).

⁸⁷ *Id.* at 9.

⁸⁸ First Omnibus Order (I) Authorizing the Rejection of Certain Unexpired Leases, (II) Authorizing the Abandonment of Certain Personal Property, Each Effective *Nunc Pro Tunc* to the Petition Date, and (III) Granting Related Relief [158.pdf](#), *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017); Second Omnibus Order (I) Authorizing the Rejection of Certain Unexpired Leases, (II) Authorizing the Abandonment of Certain Personal Property, Each Effective *Nunc Pro Tunc* to the Petition Date, and (III) Granting Related Relief [159.pdf](#), *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017); Third Omnibus Order (I) Authorizing the Rejection of Certain Unexpired Leases, (II) Authorizing the Abandonment of Certain Personal Property, Each Effective *Nunc Pro Tunc* to the Petition Date, and (III) Granting Related Relief [160.pdf](#), *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

Executory Contracts

The Limited moved to reject various executory contracts throughout their chapter 11 proceedings. Most of these contracts related to The Limited's operations at its brick-and-mortar stores, and The Limited sought to reject the contracts as part of its closing of the stores. These contracts included life insurance policies, marketing agreements, software agreements, credit card processor agreements, gift card production services, store supplies contracts, maintenance agreements, real estate consulting agreements, and other contracts related to its store operations. These motions occurred at various points throughout the proceedings and are illustrated by the table below:

<u>Motion</u>	<u>Basis for Relief</u>	<u>Date of Motion</u>	<u>Objections?</u>
First Motion ⁸⁹	11 U.S.C. § 365(a)	1/17/17 ⁹⁰	No
Second Omnibus Motion ⁹¹	11 U.S.C. § 365(a)	1/26/17 ⁹²	Yes ⁹³
Third Omnibus Motion ⁹⁴	11 U.S.C. § 365(a)	1/26/17 ⁹⁵	No
Fourth Omnibus Motion ⁹⁶	11 U.S.C. § 365(a)	3/10/17 ⁹⁷	Yes ⁹⁸
Fifth Omnibus Motion ⁹⁹	11 U.S.C. § 365(a)	3/22/17 ¹⁰⁰	No

⁸⁹ Debtors' Motion for Entry of an Order Authorizing the Rejection of Certain Executory Contracts, Effective *Nunc Pro Tunc* to the Petition Date, and Granting Related Relief [30.pdf](#), *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

⁹⁰ *Id.*

⁹¹ Debtors' Second Omnibus Motion for Entry of an Order Authorizing the Rejection of Certain Executory Contracts, Effective *Nunc Pro Tunc* to the Petition Date, and Granting Related Relief [132.pdf](#), *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

⁹² *Id.*

⁹³ Response of Me Hee Han [190.pdf](#); Response of Corrinne Ehlers [192.pdf](#); Response of Brittani Brisker [258.pdf](#) (These responses included claims for severance pay).

⁹⁴ Debtors' Third Omnibus Motion for Entry of an Order Authorizing the Rejection of Certain Executory Contracts, Effective *Nunc Pro Tunc* to the Petition Date, and Granting Related Relief [133.pdf](#) at Exhibit A, *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

⁹⁵ *Id.*

⁹⁶ Debtors' Fourth Omnibus Motion for Entry of an Order Authorizing the Rejection of Certain Executory Contracts, and Granting Related Relief [322.pdf](#) at Exhibit A, *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

⁹⁷ *Id.*

⁹⁸ Response of Fam Brands, LLC a/k/a Fam, LLC to Debtors' Fourth Omnibus Motion for Entry of an Order Authorizing the Rejection of Certain Executory Contracts, and Granting Related Relief [351.pdf](#).

⁹⁹ Debtors' Fifth Omnibus Motion for Entry of an Order Authorizing the Rejection of Certain Executory Contracts, and Granting Related Relief [345.pdf](#) at Exhibit A, *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

¹⁰⁰ *Id.*

The court approved each of The Limited's motions in substantially the same form as requested.¹⁰¹

Motion to Approve De Minimis Transactions

The Limited sought approval from the court to sell certain assets (the "De Minimis Assets") with a sale price equal to or less than \$250,000, free and clear, without the need for further court approval pursuant to § 363 of the Bankruptcy Code.¹⁰² § 363 allows a debtor, after a notice and hearing, to sell property of the estate.¹⁰³ Courts generally approve sales that reflect a reasonable exercise of the debtors' business judgment. The Limited asserted that it was exercising sound business judgment because the De Minimis Assets mostly included store items that The Limited no longer needed in light of its decision to liquidate, including office equipment, fixtures, racking, and store display items.¹⁰⁴ The Limited asked for the court's approval to sell these De Minimis Assets in a commercially reasonable manner, and proposed that any liens on the De Minimis Assets would attach to the proceeds of the various sales.

The court approved The Limited's motion to sell the De Minimis Assets without further approval.¹⁰⁵

¹⁰¹ Order Authorizing the Rejection of Certain Executory Contracts Effective *Nunc Pro Tunc* to the Petition Date and Granting Related Relief [161.pdf](#), *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017); Second Omnibus Order Authorizing the Rejection of Certain Executory Contracts Effective *Nunc Pro Tunc* to the Petition Date and Granting Related Relief [238.pdf](#); Third Omnibus Order Authorizing the Rejection of Certain Executory Contracts Effective *Nunc Pro Tunc* to the Petition Date and Granting Related Relief [219.pdf](#), *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017); Fourth Omnibus Order Authorizing the Rejection of Certain Executory Contracts [379.pdf](#), *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017); Fifth Omnibus Order Authorizing the Rejection of Certain Executory Contracts [380.pdf](#), *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

¹⁰² Debtors' Motion to Approve Procedures for De Minimis Asset Transactions [136.pdf](#), *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

¹⁰³ *Id.* at 7.

¹⁰⁴ *Id.* at 3.

¹⁰⁵ Order Approving Procedures for De Minimis Asset Transactions [245.pdf](#), *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

Appointment of Committee of Unsecured Creditors

On January 24th, 2017, the U.S. Trustee appointed the following members to the Official Committee of Unsecured Creditors (the “OCC”) pursuant to § 1102(a)(1) of the Bankruptcy Code:¹⁰⁶ LF Centennial PTE LTD, LLS Freight (a.k.a. Mast Logistics Services, Inc.), Tru Fragrance & Beauty LLC, Simon Property Group, Inc., and GGP Limited Partnership.¹⁰⁷ The OCC objected to multiple motions, discussed *infra*. The following table illustrates the thirty largest Unsecured Creditors’ Claims:¹⁰⁸

Name of Creditor	Amount of Unsecured Claim
LF Centennial PTE LTD.	\$32,224,942.04
Seven Licensing Co. LLC/aka Sunrise	\$2,843,673.17
LLS Freight/aka Mast Global Logistics	\$1,504,748.91
US Customs & Border Patrol	\$1,456,511.30
United Parcel Service-05436A/87X913	\$1,332,066.76
Kenilworth Creations	\$1,151,772.67
John Buell	\$1,087,999.02
KSC Studio LLC	\$1,013,315.87
RDG Global LLC	\$1,002,892.85
Sunrise Apparel Group LLC	\$974,758.20
MGF Sourcing US LLC	\$924,102.96
TRU Fragrance & Beauty LLC	\$798,481.83
Salty Inc.	\$656,934.78
TradeGlobal LLC	\$622,663.56
C.O. International	\$458,969.79

¹⁰⁶ The OCC obtained court approval to retain Kelley Drye & Warren (“Kelley Drye”) as its lead counsel, Pachulski Stang Ziehl & Jones LLP (“Pachulski Stang”) as its co-counsel and conflicts counsel, and CBIZ Accounting Tax and Advisory of New York, LLC (“CBIZ NU”) as its financial advisors at Docket No. 319 [319.pdf](#), 320 [320.pdf](#), 321 [321.pdf](#).

¹⁰⁷ Notice of Appointment of Creditors’ Committee Filed by U.S. Trustee [112.pdf](#) at 1, In the Matter of Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

¹⁰⁸ Voluntary Petition, *supra* note 18, [1.pdf](#) at 12–17.

Elliot Staples	\$451,880.29
Innomark Communications	\$443,360.54
DemandWare Inc.	\$364,416.66
Arden Jewelry MFG Co.	\$327,199.55
Rakuten Marketing LLC	\$312,891.56
Federal Express Corp.	\$297,891.53
Diane Gilman Jeans LLC/aka Sunrise	\$285,829.34
International Bullion	\$242,273.00
Creative Production Resources	\$233,308.96
Simon Property Group	\$218,423.66
CDW Direct LLC	\$199,688.27
GGPLP Real Estate Inc.	\$186,820.21
Google Inc.	\$181,510.43
Microsoft Licensing GP	\$169,402.79
Microsoft Online Inc.	\$157,402.35
Bernardo Inc.	\$144,046.12

Applications to Retain Professionals

The Limited filed motions to retain various professionals throughout the course of the chapter 11 proceedings.

Lead Counsel—Klehr Harrison Harvey Branzburg LLP

The Limited requested the appointment of Klehr Harrison Harvey Branzburg LLP (“Klehr Harrison”) as debtors’ counsel pursuant to §§ 327(a) and 328(a) of the Bankruptcy Code.¹⁰⁹

§ 327(a) states that a debtor, subject to court approval, “may employ one or more attorneys . . . that do not hold or represent an interest adverse to the estate, and that are

¹⁰⁹ Debtors’ Application for Entry of an Order Authorizing the Retention and Employment of Klehr Harrison Harvey Branzburg LLP as Counsel For The Debtors and Debtors In Possession Effective *Nun Pro Tunc* To The Petition Date [135.pdf](#) at 9, *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Motion to Retain Klehr Harrison].

disinterested persons, to represent or assist the [debtor] in carrying out the [debtor]’s duties under this title.”¹¹⁰ To determine if any conflict existed, Klehr Harrison obtained from The Limited the names of individuals and entities that could potentially be parties in interest to the proceedings.¹¹¹ While Klehr Harrison “may have” represented some of the parties to the proceedings in the past, it believed these matters were unrelated to The Limited and the chapter 11 proceedings.¹¹² Additionally, Klehr Harrison stated that none of these parties represented more than one percent of the firm’s fee receipts for the twelve-month period prior to the Petition Date.¹¹³ Thus, Klehr Harrison asserted that it was a disinterested person within the meaning of § 101(14), as required by § 327(a).¹¹⁴

§ 328(a) of the Bankruptcy Code allows a debtor to “employ a professional person . . . on any reasonable terms of employment.”¹¹⁵ To aid courts in determining the reasonableness of the proposed terms of employment, Bankruptcy Rule 2014(a) requires an application for retention to include: “specific facts showing the necessity for the employment, the name of the firm to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and to the best of the applicant’s knowledge, all of the firm’s connections with” any of the parties in interest.¹¹⁶

The Limited cited to Klehr Harrison’s expertise and experience with chapter 11 of the Bankruptcy Code, as well as its active involvement with other chapter 11 cases, as reasons necessitating The Limited’s retention of Klehr Harrison.¹¹⁷ Additionally, The Limited believed Klehr Harrison was familiar with its business and “uniquely able” to represent it in the chapter 11 proceedings.¹¹⁸ The Limited requested the retention of Klehr Harrison to render various legal services, including: providing legal advice, appearing in court, attending meetings, drafting legal documents, preserving the estate, and any other services assigned by The Limited to Klehr

¹¹⁰ 11 U.S.C. § 327(a) <https://perma.cc/ZBU6-FJUT>; The Bankruptcy Code uses the term “trustee” instead of “debtor,” however the court had not appointed a trustee at this point.

¹¹¹ Declaration of Domenic E. Pacitti in Support of the Debtors’ Application for Entry of an Order Authorizing the Retention and Employment of Klehr Harrison Harvey Branzburg LLP as Counsel for the Debtors and Debtors in Possession Effective *Nunc Pro Tunc* to the Petition Date [135-3.pdf](#) at 9, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Declaration of Domenic E. Pacitti].

¹¹² *Id.* at 10.

¹¹³ *Id.* at 11.

¹¹⁴ *Id.* at 12.

¹¹⁵ 11 U.S.C. § 328(a) <https://perma.cc/GC5V-28CU>.

¹¹⁶ Motion to Retain Klehr Harrison, *supra* note 109, [135.pdf](#) at 10.

¹¹⁷ *Id.* at 3.

¹¹⁸ *Id.* at 4.

Harrison.¹¹⁹ The parties’ proposed arrangement for compensation included hourly rate compensation and reimbursement of expenses incurred throughout the chapter 11 proceedings.¹²⁰ According to The Limited, the parties’ proposed arrangement corresponded with the arrangements Klehr Harrison used in other cases. The asserted hourly rates were as follows¹²¹:

Billing Category	Range of Hourly Rates
Partners	\$360-\$700
Counsel	\$300-\$450
Associates	\$230-\$425
Paralegals	\$150-\$300

The Limited stated that Klehr Harrison used the rates outlined above when representing the company prepetition. The parties’ compensation arrangement also included the reimbursement of Klehr Harrison’s non-overhead expenses, such as postage, overnight mail, courier delivery, overtime expenses, computer assisted legal research, and other expenses. The Limited stated that the parties’ compensation arrangement aligned with Klehr Harrison’s pre-petition policies and would fairly compensate the firm for its legal services.¹²²

As of the Petition Date, The Limited owed Klehr Harrison no outstanding legal fees and possessed a retainer balance of \$211,095.43.¹²³

Investment Banker—Guggenheim Securities, LLC

The Limited moved to appoint Guggenheim Securities, LLC (“Guggenheim”) as debtors’ investment banker pursuant to §§ 327(a) and 328(a) of the Bankruptcy Code.¹²⁴

¹¹⁹ *Id.* at 4-5.

¹²⁰ Klehr Harrison’s policy was to charge clients only for expenses that Klehr Harrison would not have incurred but for the representation of the client.

¹²¹ Motion to Retain Klehr Harrison, *supra* note 109, [135.pdf](#) at 6.

¹²² *Id.* at 6-7.

¹²³ Declaration of Domenic E. Pacitti, *supra* note 111, [135-3.pdf](#) at 7.

¹²⁴ Debtors’ Application for Entry of an Order, Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, Authorizing the Retention and Employment of Guggenheim Securities, LLC as Investment Banker for the Debtors and Debtors in Possession, *Nunc Pro Tunc* to the Petition Date, and Waiving Certain Time-Keeping requirements of Local Rule 2016-2 [126.pdf](#) at 1, *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Motion to Retain Guggenheim].

Guggenheim searched its internal databases to determine if it had any connections or conflicts with the parties in interest and determined that it had not represented any of the parties in interest in matters related to The Limited.¹²⁵ Additionally, according to Guggenheim’s conflicts research, no Guggenheim employees worked for The Limited within two years of the Petition Date. Because of the “breadth” of its client and customer base, Guggenheim did disclose the possibility that it possessed business relationships with some of the professionals involved with the case, but—according to Guggenheim—none of these relationships constituted interests adverse to The Limited.¹²⁶ Therefore, Guggenheim asserted that it was a disinterested person, as defined by § 101(14) and required under § 327(a) of the Bankruptcy Code, and possessed no interest adverse to The Limited’s estates.¹²⁷

The Limited sought to appoint Guggenheim as its investment banker because of its “need to retain a qualified investment banker to assist in the critical tasks” associated with its chapter 11 case.¹²⁸ Guggenheim’s experience and expertise helping retail apparel companies in complex financial restructuring and its ability to help consummate sales such as the Sale (discussed in the “363 Sale” section) contemplated by The Limited prepetition were the main reasons for the selection of Guggenheim.¹²⁹ Additionally, The Limited pointed to the two parties’ pre-petition relationship as evidence of Guggenheim’s ability to advise The Limited in an “expert and efficient manner.”¹³⁰ The services Guggenheim planned to render included: evaluating strategies to implement the Sale, marketing the Sale, soliciting interested parties for the Sale, negotiating the Sale, and other investment banking services related to the Sale. The two parties’ compensation arrangement included:

(a) Initial Retainer. A non-refundable cash fee of \$150,000 (the “Initial Retainer”), payable promptly upon execution of the Engagement Letter.

(b) Monthly Fees. A non-refundable monthly cash fee (each, a “Monthly Fee” and collectively, the “Monthly Fees”), payable in

¹²⁵ Declaration of Durc Savini in Support of Debtors’ Application for Entry of an Order, Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, Authorizing the Retention and Employment of Guggenheim Securities, LLC as Investment Banker for the Debtors in Possession, *Nunc Pro Tunc*, to the Petition Date, and Waiving Certain Time-Keeping Requirements of Local Rule 2016-2 (“Declaration of Durc Savini in Support of Guggenheim Appointment”) [126-3.pdf](#) at 3, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Declaration of Durc Savini in Support of Guggenheim Appointment].

¹²⁶ *Id.* at 4.

¹²⁷ *Id.* at 10.

¹²⁸ Motion to Retain Guggenheim, *supra* note 124, [126.pdf](#) at 3.

¹²⁹ *Id.* at 3–4.

¹³⁰ *Id.* at 5.

advance on November 1, 2016 in the amount of \$150,000 and thereafter in the amount of \$75,000 on the first day of each calendar month during the term of the Engagement Letter, without regard to whether any Transaction has been or will be consummated.

(c) Transaction Fee. A non-refundable cash fee (the “Transaction Fee”) in the amount of \$1.5 million payable promptly upon the earlier of (i) the closing of any Transaction [a.k.a. the “Sale”] or (ii) confirmation of any Plan providing for the consummation of such Transaction; provided, however, that Monthly Fee payments in excess of \$300,000 (to the extent paid) will be credited against any Transaction Fee payable to Guggenheim Securities under the Engagement Letter.¹³¹

In addition, Guggenheim required reimbursement for all “out-of-pocket expenses reasonably incurred in connection” with the rendering of services up to \$40,000.¹³² The Limited stated its belief in the reasonableness of the parties’ compensation arrangement and stated that it represented the fee structure normally used by both Guggenheim and comparable investment banking firms for similar work.¹³³

According to Guggenheim, The Limited paid the initial retainer (\$150,000) and the monthly fees for the months of November (\$150,000), December (\$75,000), and January (\$75,000) prior to the Petition Date.¹³⁴ Guggenheim agreed to waive any other unpaid amounts.

Administrative Agent—Donlin, Recano & Company, Inc.

The Limited filed a motion pursuant to § 327 of the Bankruptcy Code to retain Donlin, Recano & Company, Inc. (“Donlin, Recano”) as administrative agent.¹³⁵

The Limited asserted that any of Donlin, Recano’s existing relationships with any potential parties in interest were unrelated to the proceedings and not adverse to The Limited.

¹³¹ *Id.* at 6.

¹³² *Id.* at 6–7; Guggenheim could request The Limited’s written consent to exceed \$40,000, and The Limited could not unreasonably withhold this consent.

¹³³ Motion to Retain Guggenheim, *supra* note 124, [126.pdf](#) at 7; Guggenheim’s connections with the parties in interest is discussed at note 19.

¹³⁴ Declaration of Durc Savini in Support of Guggenheim Appointment, *supra* note 125, [126-3.pdf](#) at 10.

¹³⁵ Debtors’ Application Pursuant to 11 U.S.C. §§ 327(a), 330 and 331 and, Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rule 2014-1 for an Order Authorizing the Employment and Retention of Donlin, Recano & Company, Inc., as Administrative Agent for the Debtors, *Nunc Pro Tunc* to the Petition Date [128.pdf](#) at 3, *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Motion to Retain Donlin Recano].

Therefore, Donlin, Recano and its employees “were” disinterested persons as defined by § 101(14) and required by § 327 of the Bankruptcy Code.

Because of Donlin, Recano’s extensive experience with bankruptcy administration and its competitive fees, The Limited chose Donlin, Recano to guide it through the chapter 11 proceedings.¹³⁶ The Limited stated that this experience would aid it in performing needed administrative and plan-related functions. These functions included: assisting with balloting services, generating an official ballot certification, managing and coordinating any distributions pursuant to a confirmed plan of reorganization, as well as other administrative and ballot-related tasks.¹³⁷ The parties’ proposed professional compensation terms were as follows:¹³⁸

Professional Service	Hourly
Senior Bankruptcy Consultant	\$165
Case Manager	\$140
Technology/Programming Consultant	\$110
Consultant/Analyst	\$90
Clerical	\$45

The Limited paid Donlin, Recano a \$25,000 retainer fee pre-petition, and owed no outstanding debt to Donlin, Recano as of the Petition Date.¹³⁹

Crisis Management Firm—RAS Management Advisors, LLC

The Limited requested, pursuant to § 363 of the Bankruptcy Code, permission to retain RAS Management Advisors, LLC (“RAS”), “a crisis management and turnaround firm of independent professional consultants,” to provide: Mr. Timothy Boates, as chief restructuring officer (“CRO”), additional personnel, and financial advisory and restructuring-related services.¹⁴⁰ These services were to include managing all The Limited’s financial resources,

¹³⁶ *Id.* at 15.

¹³⁷ *Id.* at 4–5.

¹³⁸ *Id.* at Exhibit A.

¹³⁹ Affidavit of Roland Tomforde in Support of Debtors’ Application Pursuant to 11 U.S.C. §§ 327(a), 330 and 331 and, Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rule 2014-1 for an Order Authorizing the Employment and Retention of Donlin, Recano & Company, Inc., as Administrative Agent for the Debtors, *Nunc Pro Tunc* to the Petition Date (“Affidavit of Roland Tomforde”) [128-3.pdf](#) at 6, *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Affidavit of Roland Tomforde].

¹⁴⁰ Debtors Motion for Entry of an Order Authorizing the Debtors (I) to Employ and Retain RAS Management Advisors, LLC to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and

directing The Limited’s management, directing the development of a plan of reorganization, managing all the obligations owed by The Limited to its significant prepetition creditors, assisting in the development of any information that may be required in support of the chapter 11 plan, and any other services related to The Limited’s chapter 11 proceedings.

§ 363(b)(1) of the Bankruptcy Code allows a debtor—after a hearing—to use its assets outside the ordinary course of business where such use is justified by a sound business purpose.¹⁴¹ In justifying its business decision, The Limited cited to the “extensive experience” of both Boates as a senior officer for troubled companies and RAS as a service consultant.¹⁴² The Limited also coveted RAS for its “excellent reputation” for the services it provided in various chapter 11 cases throughout the country. Furthermore, The Limited asserted that the compensation agreement it entered into with RAS represented a fair and reasonable agreement and was consistent with other agreements RAS utilized in the past. For these reasons, The Limited asked the court to approve its agreement with RAS as a sound exercise of business judgment under § 363(b).

Boates, RAS, and The Limited agreed to the following fee structure¹⁴³:

RAS Employee	Daily	Hourly
Timothy Boates	\$5,500	\$550
Michael Rizzo	\$3,800	\$380
Patrick Carew	\$3,250	\$325

The Limited believed this fee structure was consistent with RAS’s typical structures in similar circumstances. Additionally, The Limited considered multiple proposals from firms similar to RAS and found this structure to be reasonable in comparison to the bids of these firms. The parties’ agreement required The Limited to pay RAS and Boates based upon weekly invoice submissions. Here, The Limited did not seek to appoint RAS under § 327 of the Bankruptcy Code—thus, both RAS and Boates would not submit fee applications provided the court granted this motion.¹⁴⁴

Restructuring-Related Services, *Nunc Pro Tunc* to the Petition Date, (II) Waiving Certain Time-Keeping Requirements Pursuant to Local Rule 2016-2(H), and (III) Granting Related Relief [127.pdf](#) at 2–3, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Motion to Retain RAS].

¹⁴¹ *Id.* at 10 (citing *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Elpida Memory, Inc.*, No. 12-10947 (CSS), 2012 WL 6090194, at *5 (Bankr. D. Del. Nov. 20, 2012); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987))

¹⁴² *Id.* at 11.

¹⁴³ *Id.* at 6.

¹⁴⁴ *Id.* at 7.

The Limited owed RAS no outstanding debt prior to the Petition Date.

Motion to Establish Interim Compensation Procedures

After moving to appoint professionals, The Limited then moved pursuant to §§ 330 and 331 of the Bankruptcy Code to establish a process for the allowance and payment of professionals retained under § 327 or § 363 of the Bankruptcy Code.¹⁴⁵ The Limited filed this motion to establish payment procedures for Klehr Harrison, Guggenheim, Donlin, Recano, and RAS (collectively, the “Retained Professionals”).

§ 331 of the Bankruptcy Code allows a debtor’s employed professionals to apply for compensation “not more than once every 120 days . . . or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title.”¹⁴⁶ The Limited moved the court to allow the Retained Professionals to apply for fees and reimbursement either monthly or every 120 days under its proposed compensation procedures (the “Compensation Procedures”).¹⁴⁷ § 330 of the Bankruptcy Code allows—after a hearing and notice to the parties in interest and the U.S. trustee—the court to award “(A) reasonable compensation for actual, necessary services rendered . . . and (B) reimbursement for actual, necessary expenses.”¹⁴⁸ The proposed Compensation Procedures allowed the professionals to collect 80% of their fees and 100% of their expenses, provided no party objected to the application.¹⁴⁹ As discussed in the preceding paragraphs of this section, The Limited stated that each professional fee structure was reasonable and necessary to effectuate its chapter 11 proceedings in an orderly manner.

Factors a court should consider in deciding whether to establish interim compensation include “the size of the reorganization cases, the complexity of the issues involved, the time required on the part of the attorneys for the debtors in providing services necessary to achieve a successful reorganization of the debtors”¹⁵⁰ The Limited cited to the size of its case and the amount of time and energy required to complete a successful chapter 11 reorganization in

¹⁴⁵ Debtors’ Motion for Entry of an Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals [130.pdf](#) at 1, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Motion to Establish Interim Compensation Procedures].

¹⁴⁶ *Id.* at 5-6; 11 U.S.C. § 331 <https://perma.cc/YBP2-H5XR>.

¹⁴⁷ Motion to Establish Interim Compensation Procedures [130-2.pdf](#), *supra* note 145, at Exhibit A (covering the Compensation procedures).

¹⁴⁸ *Id.* at 6; 11 U.S.C. § 330 <https://perma.cc/BQX9-68WN>.

¹⁴⁹ Motion to Establish Interim Compensation Procedures [130-2.pdf](#), *supra* note 145, at Exhibit A.

¹⁵⁰ *Id.* at 6. (citing *In re Int’l Horizons, Inc.*, 10 B.R. 895, 898 (Bankr. N.D. Ga. 1981).

asserting that the Compensation Procedures were reasonable and necessary to adequately compensate the Retained Professionals in a timely manner. The Limited also cited to case law to support the Compensation Procedures.¹⁵¹ Finally, The Limited asserted that the Compensation Procedures would allow it and any parties in interest to monitor the reasonableness and necessity of any compensation or reimbursement sought.

Final Orders

The court granted The Limited's motions to appoint the Retain Professionals in substantially the same manner as requested.¹⁵² Additionally, the court approved the Compensation Procedures, allowing the Retained Professionals to seek interim compensation during the chapter 11 proceedings.¹⁵³

Motion to Retain Ordinary Course Professionals

The Limited requested the entry of an order authorizing it to retain and compensate various attorneys, accountants, auditors, and other professionals (the "OCPs") in the ordinary course of its business.¹⁵⁴ The Limited also sought permission to seek additional OCPs throughout the chapter 11 proceedings.

¹⁵¹ *Id.* at 7 (citing *In re Magnum Hunter Res. Corp.*, No. 15-12533 (KG) (Bankr. D. Del. Jan. 27, 2016); *In re Samson Res. Corp.*, No. 15-11934 (CSS) (Bankr. D. Del. Oct. 14, 2015); *In re Frederick's of Hollywood, Inc.*, No. 15-10836 (KG) (Bankr. D. Del. May 17, 2015); *In re Cal Dive Int'l, Inc.*, No. 15-10458 (CSS) (Bankr. D. Del. Apr. 6, 2015); *In re Quicksilver Res. Inc.*, No. 15-10585 (LSS) (Bankr. D. Del. Apr. 14, 2015); *In re QCE Finance LLC*, No. 14-10543 (PJW) (Bankr. D. Del. Apr. 9, 2014); *In re Energy Future Holdings Corp.*, No. 14-10979) (CSS) (Bankr. D. Del. Sept. 16, 2014)).

¹⁵² Order Authorizing the Retention and Employment of Klehr Harrison Harvey Branzburg LLP as Counsel for the Debtors and Debtors in Possession Effective *Nunc Pro Tunc* to the Petition Date [220.pdf](#), *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017); Order, Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, Authorizing the Retention and Employment of Guggenheim Securities, LLC as Investment Banker for the Debtors and Debtors in Possession, *Nunc Pro Tunc* to the Petition Date, and Waiving Certain Time-Keeping Requirements of Local Rule 2016-2, [234.pdf](#) *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017); Order Pursuant to 11 U.S.C. §§ 327(a), 330 and 331 and, Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rule 2014-1 Authorizing the Employment and Retention of Donlin, Recano & Company, Inc., as Administrative Agent for the Debtors, *Nunc Pro Tunc* to the Petition Date [218.pdf](#), *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017); Order Authorizing the Debtors (I) to Employ and Retain RAS Management Advisors, LLC to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services, *Nunc Pro Tunc* to the Petition Date, (II) Waiving Certain Time-Keeping Requirements Pursuant to Local Rule 2016-2(H), and (III) Granting Related Relief [217.pdf](#), *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

¹⁵³ Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals (the approved Compensation Procedures are laid out in detail in [236-1.pdf](#) at Exhibit 1 attached to this Order) [236.pdf](#), *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

¹⁵⁴ Debtors' Motion for Entry of an Order Authorizing the Debtors to Retain and Compensate Professionals Utilized in the Ordinary Course of Business ("Motion to Retain Ordinary Course Professionals") [131.pdf](#) at 3, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

§ 327 of the Bankruptcy Code requires a debtor to obtain court permission before retaining professionals to perform chapter 11 services.¹⁵⁵ The Limited sought to avoid the court permission requirement because it wanted to retain the OCPs to perform operational services, rather than services related to the chapter 11 proceedings.¹⁵⁶ The Limited filed a motion out of a desire “to provide clarity and an opportunity for oversight” and to “establish clear mechanisms for retention and compensation of the OCPs.” The OCPs were as follows:¹⁵⁷

<u>Name of OCP</u>	<u>Service</u>
Greenberg Traurig	Legal – IP Maintenance
Ice Miller LLP	Legal Services – Contracts/Leases
Indirect Tax Solutions	Personal Property Tax Filings and Support
KPMG	Sales & Use Tax Filings and Support
Law Offices of Craig Fullen	Legal – Contract Review
Powers Law Group	Legal – Real Estate

The court granted this motion in substantially the same form as The Limited requested.¹⁵⁸

¹⁵⁵ *Id.* at 6.

¹⁵⁶ *Id.* at 7.

¹⁵⁷ *Id.* [131-3.pdf](#) at Exhibit B.

¹⁵⁸ Order Authorizing the Debtors to Retain and Compensate Professionals Utilized in the Ordinary Course of Business [237.pdf](#), *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

DIP Financing

On the Petition Date, The Limited had a total cash balance of less than \$250,000.¹⁵⁹ Further, The Limited owed Cerberus Business Finance, LLC, in its capacity as a prepetition lending agent, \$13.4 million of principal under a prepetition credit agreement.¹⁶⁰ The Limited met with its restructuring advisor and prepared a thirteen-week plan (the “Budget”) based on its projected cash needs.¹⁶¹ As a result, The Limited filed a motion to, among other things, obtain senior-secured post-petition financing (the “DIP Facility”) from Cerberus.¹⁶² In addition to post-petition financing, The Limited requested that it be permitted to use cash collateral.¹⁶³ According to The Limited, both the DIP Facility and the use of cash collateral were necessary in order for The Limited to have sufficient liquidity throughout the chapter 11 proceedings and the completion of the proposed § 363 Sale, discussed *infra*.¹⁶⁴

Cerberus Business Finance, LLC (the “DIP Agent”) and other prepetition lenders agreed with The Limited to enter into a debtor-in-possession credit agreement and other loan documents (the “DIP Credit Agreement” and together with the loan documents defined collectively as “DIP Loan Documents”) whereby the DIP Agent and the other lenders (collectively the “DIP Lenders”) would advance loans (the “DIP Loans”) to The Limited in aggregate maximum principal amounts of \$4.6 million on an interim basis and \$6 million on a final basis.¹⁶⁵ Under the proposed terms of the DIP Loan Documents, both the DIP Facility and cash collateral were to be used to:

- (1) pay fees and expenses related to the DIP Credit agreement and the chapter 11 case, and, consistent with the budget,
- (2) repay the DIP Loans and any other outstanding obligations, and

¹⁵⁹ Declaration of Timothy Boates, *supra* note 6, [12.pdf](#) at 17.

¹⁶⁰ *Id.* at 10.

¹⁶¹ Debtor’s Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Post-Petition Secured Financing Pursuant to Section 364 of the Bankruptcy Code, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Superiority Administrative Expense Claims, (IV) Granting Adequate Protection to the Pre-Petition Lenders, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief [11.pdf](#) at 21, *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter DIP Financing Motion].

¹⁶² *Id.* at 1–2.

¹⁶³ *Id.* at 2; Declaration of Timothy Boates, *supra* note 6, [12.pdf](#) at 17.

¹⁶⁴ Declaration of Timothy Boates, *supra* note 6, [12.pdf](#) at 16.

¹⁶⁵ DIP Financing Motion, *supra* note 161, [11.pdf](#) at 2.

(3) fund working capital of debtor, consistent with the Budget.¹⁶⁶

The DIP Facility and the outstanding balance on the prepetition credit agreement was to be paid back from the proceeds of the Sale.¹⁶⁷ The Limited believed that if it received the funding, that it would be able to effectively administer the chapter 11 proceedings.¹⁶⁸

Why DIP Financing Was Appropriate

Under § 364 of the Bankruptcy Code, a debtor is allowed to obtain secured financing when the debtor illustrates that obtaining such financing is an exercise of its sound business judgment.¹⁶⁹ An exercise of sound business judgment is shown by illustrating that a reasonable business person would make the same decision under similar circumstances. The Limited asserted that moving forward with its motion to obtain the DIP Facility was an exercise of its sound business judgment.¹⁷⁰ By negotiating the DIP Credit Agreement and other loan documents in good faith and at arms-length, The Limited believed that the court should find that it used its sound business judgment in obtaining access to the DIP Facility and cash collateral.¹⁷¹

The proposed DIP Facility called for the financing to be secured by valid and perfected first priority claims, priming liens, and security interests in the DIP collateral and any prepetition collateral (collectively, the “Collateral”), which would be superior to any claims or security interests that any creditor of The Limited’s Estates may have, subject to certain expenses and other priority liens permitted in the DIP Credit Agreement.¹⁷² The proposal stated that the liens shall be,

first and senior in priority to all other interests and liens of every kind, nature and description, whether created consensually, by an order of the court or otherwise, including, without limitation, liens or interests granted in favor or third parties in conjunction with Section 363, 364 or any other Section of the Bankruptcy Code or other applicable law.¹⁷³

¹⁶⁶ *Id.* at 10.

¹⁶⁷ *Id.* at 30.

¹⁶⁸ *Id.*

¹⁶⁹ DIP Financing Motion, *supra* note 161, [11.pdf](#) at 24.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 26.

¹⁷² *Id.* at 11–12, 26.

¹⁷³ *Id.* at 12.

Additionally, upon entry of the Interim DIP Order, consistent with § 364(c)(1) of the Bankruptcy Code, Cerberus would obtain superiority claims with priority over any administrative claims against The Limited's estates and any other benefits that are allowed under §§ 507(b) and 503(b)(1) of the Bankruptcy Code.¹⁷⁴

In order to obtain post-petition credit under § 364(c), the debtor must show that it is “unable to obtain unsecured credit allowable under § 503(b)(1) of the Bankruptcy Code.”¹⁷⁵ The Limited claimed that it was entitled to financing under § 364(c) because it met the standard used by courts to determine eligibility for such financing.¹⁷⁶ Consistent with the aforementioned test, The Limited asserted that it was entitled to relief because:

- (1) third-party lenders were not willing to provide The Limited with unsecured post-petition financing or financing on a junior secured basis, thus making financing from the prepetition lenders the only financing that would be workable;
- (2) without obtaining the DIP Facility, The Limited would not have sufficient liquidity to make its proposed Sale, discussed *infra*, which would significantly decrease the value of its estate; and
- (3) the terms of the DIP Facility were “fair, reasonable and adequate.”¹⁷⁷

Because The Limited was unable to obtain unsecured credit, it asserted that approving the superiority liens in favor of the DIP Agent and other lenders was appropriate under § 364(c) of the Bankruptcy Code, which provides that a court may allow a debtor to obtain credit secured by a lien on property of the estate or secured by a junior lien on property of the estate that is subject to a lien.¹⁷⁸ Further, § 364(d) of the Bankruptcy Code provides that a debtor may obtain financing secured by a senior lien on property already subject to an existing lien, after a notice and a hearing, where the debtor is “unable to obtain such credit otherwise,” and “there is adequate protection of the interest of the holder of the lien on the property of the estate on which the senior or equal loan is proposed to be granted.”¹⁷⁹ Since the prepetition lenders, who were the same as the DIP Lenders, consented to the DIP Facility, The Limited asserted that there was no

¹⁷⁴ *Id.*

¹⁷⁵ 11 U.S.C. § 364(c) <https://perma.cc/87JV-DWQ8>

¹⁷⁶ DIP Financing Motion, *supra* note 161, [11.pdf](#) at 26–27.

¹⁷⁷ *Id.* at 27.

¹⁷⁸ *Id.*; 11 U.S.C. § 364(c) <https://perma.cc/87JV-DWQ8>.

¹⁷⁹ 11 U.S.C. § 364(d)(1) <https://perma.cc/TA7J-YEM5>.

need to show adequate protection as required by the Code.¹⁸⁰ Because of this, The Limited was entitled to incur the proposed priming liens in the DIP Facility. The Limited was also unable to obtain credit through an alternative source, so the language of § 364 was satisfied.¹⁸¹

DIP Financing Proposal

In order for the DIP Credit Agreement to become effective, the lenders required that the Interim Order be entered on January 20, 2017,¹⁸² and the Final Order was required to be entered thirty days after the Petition Date.¹⁸³ Further, The Limited was required to have negotiated the Loan Documents and all other agreements in good faith and to have paid all reasonable expenses relating to the DIP Credit Agreement.¹⁸⁴ The DIP Agent and the other lenders also required secured senior superpriority liens on all of the Collateral.¹⁸⁵ Additionally, the agreement would have been void in the event one of the default provisions occurred before the Final Order was entered.¹⁸⁶ These provisions included: the failure of any party to make payments pursuant to the DIP Loan Documents, the making of a false representation or warranty, the imposition of any stay order which would affect the conduct of the parties to the DIP Loan Documents in a material way, the DIP Credit Agreement not being approved by the proposed dates, an order of the court converting the proceedings into a chapter 7 case, any order modifying the first day orders pertaining the cash management system without the consent of an administrative agent, and the DIP Agent and the other lenders either failing to obtain senior superpriority liens or losing such status on any liens they might have been granted by the court.¹⁸⁷

In addition to proposing that the DIP Agent and the other lenders be granted senior priority liens in the DIP collateral, The Limited requested that it be able to repay the DIP Facility and other prepetition obligations out of the proceeds that it was to receive from the proceeds of the Sale.¹⁸⁸ The proposed repayment method would allow The Limited to reduce any accruing

¹⁸⁰ DIP Financing Motion, *supra* note 161, [11.pdf](#) at 28.

¹⁸¹ *Id.* at 29.

¹⁸² *Id.* at 6.

¹⁸³ *Id.* at 8.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ DIP Financing Motion, *supra* note 161, [11.pdf](#) at 8.

¹⁸⁷ *Id.* at 14–17.

¹⁸⁸ *Id.* at 30.

interest under prepetition agreements, and payments made from the Sale proceeds would not harm any assets or other creditors of the debtor.¹⁸⁹

Next, The Limited proposed, with the pre-petition lenders consent, that it be able to use cash collateral.¹⁹⁰ In order to comply with § 363(e) of the Bankruptcy Code, The Limited proposed to provide adequate assurance protections (the “Adequate Protection Obligations”) to protect the pre-petition lenders from any depreciation in value of the cash collateral that may arise as a result of the chapter 11 proceedings.¹⁹¹ The Adequate Protection Obligations provided:

- (1) valid and automatically perfected first priority replacement liens and security interests in and upon any prepetition collateral and Cash Collateral;
- (2) superpriority administrative claims and all of the other benefits and protections allowed under section 507(b) of the Bankruptcy Code, junior only in right to any superpriority administrative claims granted to the DIP Agent and other lenders on account of the DIP Facility and any carve-out expenses; and
- (3) attorneys’ fees and expenses and financial advisors’ fees and expenses.¹⁹²

The Limited and the prepetition lenders believed that the Adequate Assurance Obligations were appropriate and would protect the cash collateral from any depreciation in value.¹⁹³ In using cash collateral, the DIP Credit Agreement, in the Variance Covenant section, provided that it must be used in accordance with the Budget.¹⁹⁴ Thus, The Limited asserted that it should be authorized to use cash collateral during the proceedings.¹⁹⁵

Next, The Limited sought approval from the court to make payments to the DIP Agent and other lenders as stated in the DIP Loan Documents.¹⁹⁶ The payments covered such things as all out-of-pocket expenses incurred by the DIP Agent and other lenders due on the Final Effective Date and a closing fee of 1.00% for the account of each of the lenders that was payable

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 31; *see* 11 U.S.C. § 363(e) <https://perma.cc/ZD74-3TNQ>.

¹⁹² DIP Financing Motion, *supra* note 161, [11.pdf](#) at 31–32.

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 11.

¹⁹⁵ *Id.* at 32.

¹⁹⁶ *Id.* at 32.

on the Interim Final Effective Date.¹⁹⁷ Since these terms were critical in obtaining the DIP Facility, The Limited would be unable to proceed with obtaining financing if the court did not authorize the payments.¹⁹⁸

The Limited also requested that the automatic stay provision provided by § 362 of the Bankruptcy Code be modified to allow the lenders to file any necessary documents relating to the validation and perfecting of the liens in the event the court granted the lien provisions.¹⁹⁹ Under the automatic stay provision, all claims that arise before a petition date are halted, and litigation involving those claims must stop.²⁰⁰ Modification of the automatic stay was necessary for The Limited to grant the liens to the lenders and to incur all of the obligations that were detailed in the proposed Interim DIP Order.²⁰¹ In the event of default by The Limited, and pending approval of the automatic stay modification, the automatic stay would have been vacated to permit the DIP Agent to exercise all rights and remedies in accordance with the DIP Loan Documents.²⁰²

The DIP Credit Agreement required compliance with reporting covenants that are normal for DIP financings, such as the delivery of financial statements to the Office of the United States Trustee.²⁰³

The proposal also contained a “Sales Milestones” provision that required The Limited to obtain several orders from the court regarding the Sale to the satisfaction of the DIP Agent and the other lenders.²⁰⁴

A “Carve Out” provision was included which set aside money from the DIP Facility to pay the U.S. Trustee, the clerk of the court, any reasonable fees and expenses up to \$50,000 incurred by a trustee, and any other fees that may be approved by the court following the entry of a final order.²⁰⁵

¹⁹⁷ DIP Financing Motion, *supra* note 161, [11.pdf](#) at 32–33.

¹⁹⁸ *Id.* at 33.

¹⁹⁹ *Id.* at 34.

²⁰⁰ 11 U.S.C. § 362 <https://perma.cc/RP37-G7HS>.

²⁰¹ *Id.* Dip Financing Motion, *supra* note 161, [11.pdf](#) at 34.

²⁰² *Id.*

²⁰³ *Id.* at 11.

²⁰⁴ DIP Financing Motion, *supra* note 161, [11.pdf](#) at 11.

²⁰⁵ *Id.* at 12.

Subject to entry of a final order, the proposal called for no costs or expenses of administration which may have accrued at any time during the Interim Period to be charged against the DIP Agent, the lenders, the pre-petition agent, the pre-petition lenders, the collateral, or pre-petition collateral pursuant to § 506(c) of the Bankruptcy Code.²⁰⁶

One of the last provisions was an “Indemnification” provision whereby the parties agreed to jointly and severally indemnify the DIP Agent and each lender from any indemnified taxes whether or not such taxes were correctly or legally asserted.²⁰⁷

Objection to DIP Financing Motion

TradeGlobal, LLC (“TradeGlobal”) filed a limited objection regarding the DIP Financing Motion and the lien rights that could have resulted from that motion.²⁰⁸ TradeGlobal’s limited objection arose from an agreement that it had previously entered into with The Limited. Under the agreement, TradeGlobal provided “warehousing, order fulfilment services, shipper services, customer support, and other services for the Debtor’s e-commerce business.”²⁰⁹ TradeGlobal received and possessed certain inventory and, according to TradeGlobal, held valid, possessory warehouse liens on The Limited’s inventory to secure the obligations owed to TradeGlobal under the agreement.²¹⁰ When The Limited filed the chapter 11 case, The Limited advised TradeGlobal that the property subject to the warehouse liens was not included in the Sale.²¹¹ TradeGlobal claimed that it was owed \$1.6 million, and the entirety of the balance was secured by its warehouse lien rights.²¹²

TradeGlobal objected to The Limited’s DIP Motion on three grounds. First, TradeGlobal was concerned that the proposed DIP Loan would impair, prejudice, or otherwise affect the validity, enforceability, or priority of the liens asserted by TradeGlobal.²¹³ Second, TradeGlobal was concerned by The Limited’s request that the court grant to the DIP Agent any liens, claims, rights or interests that were senior to any other liens.²¹⁴ Lastly, TradeGlobal objected to granting

²⁰⁶ *Id.* at 12–13.

²⁰⁷ *Id.* at 18.

²⁰⁸ Limited Objection of TradeGlobal, LLC Regarding the Debtors’ DIP Financing Motion and Notice of Warehouse Lien Rights [46.pdf](#) at 1, *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 1, 2017) [hereinafter Limited Objection].

²⁰⁹ *Id.* at 2.

²¹⁰ *Id.* at 3.

²¹¹ *Id.* at 4.

²¹² *Id.* at 3–4.

²¹³ *Id.* at 5.

²¹⁴ *Id.*

to the DIP Agent or any other lender any rights that would have interfered with TradeGlobal’s rights in the TradeGlobal collateral or any sale or other proceeds thereof.²¹⁵

Addressing The Limited’s statement that it did not need to show adequate protection because the pre-petition lenders consented to the DIP Facility, TradeGlobal asserted that The Limited never made mention of the liens TradeGlobal held, and thus it did not consent to the DIP Facility.²¹⁶ Consequently, TradeGlobal claimed that The Limited failed to provide adequate protection—meaning the DIP Motion should be denied.²¹⁷ Additionally, TradeGlobal sought assurances that, in the event the property it held liens on was sold during the Sale, the proceeds from that Sale would go to TradeGlobal rather than the DIP Agent or any other lenders.²¹⁸

TradeGlobal requested that the court enter an order consistent with its concerns regarding its warehouse liens.²¹⁹ TradeGlobal wanted all its liens to be labeled as “Permitted Priority Liens” in order to ensure that the liens were to remain regardless of any other order that was entered.²²⁰

Interim Order

The court released the Interim Order on January 18, 2017.²²¹ Under the Interim Order, the court authorized The Limited to borrow, pursuant to the DIP Credit Agreement, a maximum amount of \$4.6 million as requested provided that such borrowing is consistent with the budget and DIP Loan documents.²²² The DIP Loan Documents, including the DIP Credit Agreement, were approved by the court and the court allowed for any amendment to be made as long as it was not material and it was filed to the court with the written notice of the amendment to the

²¹⁵ *Id.*

²¹⁶ *Id.* at 6.

²¹⁷ *Id.*

²¹⁸ *Id.* at 6–7.

²¹⁹ *Id.* at 7.

²²⁰ *Id.*

²²¹ Interim Order (I) Authorizing the Debtors to Obtain Post-Petition Secured Financing Pursuant to Section 364 of the Bankruptcy Code; (II) Authorizing the Debtors to Use Cash Collateral; (III) Granting Liens and Superpriority Administrative Expense Claims; (IV) Granting Adequate Protection to the Pre-Petition Lenders; (V) Modifying the Automatic Stay; (VI) Scheduling a Final Hearing; and (VII) Granting Related Relief [65.pdf](#), *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Interim DIP Financing Order].

²²² *Id.* at 9.

appropriate parties.²²³ The Interim Order authorized The Limited to abide completely by the proposed terms of the agreement between itself, the DIP Agent, and the other lenders.²²⁴

Lastly, the court stated that nothing in the Interim Order would hinder TradeGlobal's lien rights, grant any liens that was superior to TradeGlobal's lien, or in any way impair TradeGlobal's collateral or any proceeds that resulted from the proceeds of such collateral.²²⁵

Final Order

The Final Order was released on February 16, 2017.²²⁶ The Final Order authorized The Limited to borrow \$6 million pursuant to the DIP Credit Agreement.²²⁷ All DIP Loan Documents were approved by the court under the same conditions that were given in the Interim Order.²²⁸ The Final Order reaffirmed the proposed terms between The Limited, DIP Agent, and the other lenders.²²⁹

²²³ *Id.* at 10.

²²⁴ *See id.*

²²⁵ *Id.* at 36.

²²⁶ Final Order (I) Authorizing the Debtors to Obtain Post-Petition Secured Financing Pursuant to Section 364 of the Bankruptcy Code; (II) Authorizing the Debtors to Use Cash Collateral; (III) Granting Liens and Superpriority Administrative Expense Claims; (IV) Granting Adequate Protection to the Pre-Petition Lenders; (V) Modifying the Automatic Stay; and (VI) Granting Related Relief [233.pdf](#), *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Final DIP Financing Order].

²²⁷ *Id.* at 8.

²²⁸ *Id.* at 9.

²²⁹ *See id.*

The 363 Sale

Background

During the last few years prior to filing bankruptcy, while facing decreasing sales and a nationwide consumer migration to the online marketplace, The Limited employed various “investment banking, financial, and restructuring advisors” to develop strategies to preserve shareholder value.²³⁰ In September 2016, The Limited and its advisors began exploring two types of transactions: one involving The Limited’s intellectual property assets and e-commerce business and the other involving going concern transactions centered around its brick and mortar business.²³¹ The Limited soon realized the market for its brick and mortar business as a going concern was essentially non-existent—none of the “several” parties that expressed interest would even submit a non-binding written indication of interest.²³² As a result, The Limited decided to establish the twin goals of winding down its brick and mortar business and selling its intellectual property (the “Intellectual Property”) packaged with certain related e-commerce assets.²³³ The Limited completed the first of these twin goals between December 14, 2016 and January 8, 2017, prepetition.²³⁴ During this period, The Limited sold substantially all of its brick and mortar inventory, “ceased operations at and vacated” all of their roughly 250 stores, and returned possession of all stores to their respective landlords. Additionally, The Limited shut down its e-commerce business, leaving an intellectual property and e-commerce asset sale as its remaining goal.²³⁵

Asset Purchase Agreement—Prepetition Negotiations and Bidding

The Limited received interest from “several” parties regarding The Limited’s intellectual property and certain e-commerce assets related to the intellectual property. Two parties emerged from the pack of suitors and entered into formal asset purchase agreement negotiations with The Limited. The two parties engaged in “more than two dozen rounds of bidding,” increasing the cash portion of the purchase price by 72%.²³⁶ Limited IP Acquisition LLC (the “Purchaser”) defeated the other bidding party and entered into an asset purchase agreement (the “Purchaser APA”) with The Limited on January 12, 2017.²³⁷ The Purchaser was an affiliate of Sycamore

²³⁰ Declaration of Timothy Boates, *supra* note 6, [12.pdf](#) at 3.

²³¹ *Id*

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁶ *Id.* at 5.

²³⁷ *Id.*

Partners, a New York private equity firm with a history of investing in retail companies.²³⁸ The Purchaser agreed to purchase The Limited’s Intellectual Property and certain related e-commerce assets (collectively, the “Sale Assets”) “subject to higher or better bids through a bankruptcy court sale process,” making the Purchaser the stalking horse bidder.²³⁹ The Purchaser agreed to a cash purchase price of \$25,750,000 (the “Cash Portion”) and to assume The Limited’s obligations under the executory contracts (the “Executory Contracts”) associated with the Sale Assets (collectively, the “Purchase Price”).²⁴⁰ The Purchaser’s bid also included various bid protections that would be triggered if a superior bid materialized post-petition, including a \$500,000 maximum expense reimbursement fee and a three percent break-up fee payable to the Purchaser (collectively, the “Bid Protections”).²⁴¹ The Purchaser also demanded a specific timeline for the sale, granting the Purchaser the ability to terminate the Purchaser APA if the court failed to enter a Bid Protection Order by February 3, 2017 and failed to enter a Sale Order before February 24, 2017.²⁴²

The Limited and its advisors determined that this offer represented the best bid available, and that the timeline, although speedy, allowed The Limited to receive maximum value for its assets and avoided the need to start a new and costly sale process.²⁴³ Additionally, The Limited and its advisors believed the value offered by the Purchaser APA outweighed the costs associated with the Bid Protections in the event of a superior post-petition bid, and felt the additional value offered by such a bid would offset the debtors’ costs associated with the Bid Protections.²⁴⁴ This belief was valid, as The Limited proposed a minimum overbid requirement of \$25,750,000, in addition to a required \$1,272,500 to cover the Bid Protections and \$250,000

²³⁸ Lillian Rizzo & Peg Brickley, *The Limited Files for Chapter 11 Bankruptcy Protection*, WALL ST. J., January 17, 2017. <https://perma.cc/9QLZ-7DYV>.

²³⁹ Declaration of Timothy Boates, *supra* note 6, [12.pdf](#) at 5.

²⁴⁰ Debtors’ Motion for Entry of (I) an Order (A) Approving Form and Manner of Notices, (B) Scheduling a Bid Protections Hearing, an Auction, a Sale Hearing, and Establishing Dates and Deadlines Related Thereto, (C) Approving Procedures for the Assumption and Assignment of Executory Contracts, and (D) Granting Related Relief; (II) an Order (A) Approving Certain Bid Protections in Connection With the Sale of Certain of the Debtors’ Assets and (B) Granting Related Relief; and (III) An Order (A) Approving the Asset Purchase Agreement Between the Debtors and the Purchaser, (B) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (C) Authorizing the Assumption and Assignment of Contracts, and (D) Granting Related Relief [13.pdf](#), *In re Limited Stores Co., LLC*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter “Bidding and Sale Motion”].

²⁴¹ Declaration of Durc Savini in Support of the Debtors’ Sale Motion [13-4.pdf](#) at 5–6, *In re LLC Wind Down, LLC*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Declaration of Durc Savini].

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.* at 5.

to best the Purchaser’s bid—bringing the minimum overbid amount to \$27,272,500.²⁴⁵ Therefore, under these requirements, any qualifying bid would have to not only offset the costs associated with the Bid Protections, it would have to exceed those costs by \$250,000.

The Bidding and Sale Motion

On the petition date, The Limited filed a motion (the “Bidding and Sale Motion”) seeking, among other related relief, either approval of the Purchaser’s stalking horse bid or a higher or better bidder.²⁴⁶ The Limited’s motion highlighted the ability of the \$25.75 million Cash Portion to cover the approximately \$13.4 million in debt secured by the Sale Assets, and stressed the need to abide by a specific sale timeline to limit the estimated monthly costs of \$3.4 million per month associated with the bankruptcy proceedings—thus maximizing for unsecured creditors the remaining value created by the Purchaser APA.²⁴⁷

The Sale Timeline

The proposed timeline requested: (1) setting a Bid Protections Hearing to consider approval of the Bid Protections to occur no later than ten days after the Petition Date; (2) setting the Sale Hearing to occur no later than thirty days after the Petition Date; (3) setting the objection deadline and the deadline to submit competing binding offers with respect to the Asset Sale to be no later than seven days prior to the Sale Hearing; and (4) setting the Auction, if any, to occur no later than five days prior to the Sale Hearing (collectively, the “Sale Timeline”).²⁴⁸ The Limited believed extending the sale process would not yield a higher offer, that the Sale Timeline provided the best protection against any negative effects the chapter 11 proceedings could have had on the value of The Limited’s brand, and—most importantly—that the Sale Timeline would ensure the Purchaser would not walk away.²⁴⁹

Authority to Consummate the Sale

The Limited’s motion sought the court’s approval to consummate the sale contemplated by the Purchaser APA (the “Sale”), “free and clear of all liens, claims, encumbrances, and interests pursuant to § 363 of the Bankruptcy Code.”²⁵⁰

²⁴⁵ Bidding and Sale Motion, *supra* note 240, [13.pdf](#) at 14.

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 5.

²⁴⁸ *Id.* at 5-6.

²⁴⁹ *Id.* at 6.

²⁵⁰ *Id.* at 9.

The Limited asked the court to find that the Sale was a proper exercise of The Limited’s business judgment.²⁵¹ § 363(b)(1) of the Bankruptcy Code outlines the procedures a debtor must follow to sell property of the estate outside the ordinary course of business. The main requirement of the provision is that a “sound business purpose exists for the sale.”²⁵² Once a debtor establishes a sound business justification, the business judgment rule applies and creates a presumption that the directors “acted on an informed basis, in good faith, and in the best interests of the company.”²⁵³ The Limited argued that its exhaustive research with its advisors regarding various alternatives, along with the extensive negotiations regarding the Sale, showed that the Sale represented the best business option to maximize the value of the estate—satisfying the § 363(b)(1) standard as a result.²⁵⁴

The Limited also cited to Bankruptcy Rule 6004(f) as additional authority to request the court to approve the sale of estate property outside the ordinary course of business.²⁵⁵ Courts have construed Rule 6004(f) as allowing a debtor broad discretion to determine how it sells its assets. The Limited again stated its belief that a speedy sale would maximize the value of its estate and asked the court to deem its decision to sell as “appropriate under the circumstances.”²⁵⁶

Additionally, The Limited requested a “free and clear” sale of the Sale Assets under § 363(f) of the Bankruptcy Code.²⁵⁷ § 363(f) allows a debtor to sell assets free and clear of another party’s interest in the property if:

- (a) applicable non-bankruptcy law permits such a free and clear sale;
- (b) the holder of the interest consents; (c) the interest is a lien and the sale price of the property exceeds the value of all liens on the property; (d) the interest is the subject of a bona fide dispute; or (e) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest.”²⁵⁸

²⁵¹ *Id.* at 19.

²⁵² *Id.* at 17.

²⁵³ *Id.* at 18.

²⁵⁴ *Id.*

²⁵⁵ *Id.* at 19.

²⁵⁶ *Id.* at 19-20.

²⁵⁷ *Id.* at 20.

²⁵⁸ *Id.*

In stating that the Sale met at least one of the § 363(f) conditions, The Limited argued that the Sale proceeds would exceed the value of all liens on the property and the net proceeds of the Sale would protect any party with an interest related to the Sale Assets.²⁵⁹ Accordingly, The Limited sought to sell the Sale Assets “free and clear” of all claims and interests (other than the assumption and assignment of the Executory Contracts), with those claims and interests to attach to the net proceeds that would result from the Sale.²⁶⁰

The Limited also reinforced its position that the prepetition bidding process constituted “arm’s-length negotiations” and that the Purchaser was not an affiliate of The Limited.²⁶¹ The Limited then detailed the notable provisions of the Purchaser APA, referencing the Purchase Price discussed above, various administrative provisions, and importantly requesting a finding that the Purchaser was not a successor to The Limited or its estates for successor liability purposes.²⁶² This request was important because the potential for successor liability drives down the value of an asset due to the risk of facing future liability for its predecessor’s faults—therefore, a finding that the Purchaser was a successor to The Limited would put the Purchase Price in jeopardy.

The Limited sought § 363(m) protection for the Purchaser as well.²⁶³ § 363(m) of the Bankruptcy Code provides protection to good faith purchasers in the event of a reversal or modification of a sale order on appeal.²⁶⁴ The Sale and Bidding Motion referred to case law to define the “good faith” inquiry as one that looks to the “integrity of [the Purchaser’s] conduct in the course of the sale proceedings.”²⁶⁵ The Limited asserted that the Purchaser, or any successful post-petition bidder, satisfied the good faith inquiry for four main reasons, including: (1) the Purchase Price paid by the Purchaser constituted “substantial, fair, and reasonable” consideration; (2) the parties entered into the Purchaser APA in good faith and after extensive arm’s-length negotiations, during which all parties maintained the representation of competent counsel; (3) no evidence of fraud, collusion, or an insider sale existed; and (4) the bid underwent evaluation by The Limited and its advisors—therefore, The Limited argued, the Purchaser represented a good faith purchaser as required by § 363(m).²⁶⁶

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.* at 9.

²⁶² *Id.* at 10-12.

²⁶³ *Id.*

²⁶⁴ *Id.* at 21.

²⁶⁵ *Id.* (See also, *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F. 2d 143, 147 (3d Cir. 1986)).

²⁶⁶ *Id.*

The Limited also requested the court’s approval of the assignment to the Purchaser of the Executory Contracts under § 365 of the Bankruptcy Code, which allows a debtor to assume and assign its executory contracts, subject to court approval, if the debtor’s decision passes muster under the business judgment rule and if defaults under such contracts “are cured and adequate assurance of future performance is provided.”²⁶⁷ The Limited stated that the Executory Contracts formed an “integral part” of the Sale Assets and were “essential” to receiving the best value for the Sale Assets—thus, according to The Limited, including the Executory Contracts in the transaction extracted the best possible offer and represented an exercise of its sound business judgment.²⁶⁸ § 365(b) further requires any assumption and assignment to meet three additional requirements, requiring a debtor to: (1) cure, or provide adequate assurance of promptly curing, prepetition defaults; (2) compensate parties for losses related to the defaults; and (3) provide adequate assurance of future performance under the executory contracts.²⁶⁹ The Limited submitted that the Sale met the statutory requirements because the Purchaser APA required the Purchaser to cure all defaults under the Executory Contracts and because the Purchaser’s financial sophistication demonstrated its ability to perform under the Executory Contracts.²⁷⁰

Proposed Bid Protection Approval and Authority for Approval

The Bidding and Sale Motion requested entry of an order approving the Bid Protections.²⁷¹ The Limited stated that the Bid Protections were a “necessary component of the Purchaser’s bid,” and stated its belief that the Purchaser would not have submitted an offer or allowed the court to subject its offer to the post-petition bidding process without the safeguards provided by the Bid Protections.²⁷² In addition to citing case law supporting the Bid Protections, The Limited also cited the Purchaser’s time and monetary expenses in providing its bid and argued that the Purchaser should receive compensation for these expenses in the case of a superior and successful post-petition overbid.²⁷³ “In short,” The Limited asserted that the Bid

²⁶⁷ *Id.* at 22.

²⁶⁸ *Id.* at 23.

²⁶⁹ *Id.* at 23-24.

²⁷⁰ *Id.* at 24.

²⁷¹ *Id.* at 13.

²⁷² *Id.*

²⁷³ *Id.* at 26-27 (See, e.g., *In re Brookstone Holdings Corp.*, No. 14-10752 (BLS) (Bankr. D. Del. April 25, 2014); *In re Simlexity, LLC*, No. 14-10569 (KG) (Bankr. D. Del. April 4, 2014); *In re OCZ Tech. Group, Inc.*, No. 13-13126 (PJW) (Bankr. D. Del. Dec. 23, 2013); *In re Oncure Holdings Inc.*, No. 13-11540 (KG) (Bankr. D. Del. July 24, 2013); *In re Synagro Tech. 's, Inc.*, No. 13-11041 (BLS) (Bankr. D. Del. May 13, 2013)).

Protections were fair and reasonable under the circumstances.²⁷⁴ Therefore, The Limited requested approval of the Bid Protections as outlined above.²⁷⁵

Additionally, The Limited sought to only hold an Auction if they first obtained a bid that:

(a) is a bulk bid to purchase all or substantially all of the Assets; (b) clearly sets forth the purchase price to be paid, including and identifying separately any cash and non-cash components (the “Bid Price”); (c) is accompanied by a cash deposit in the amount equal to 5% of the Bid Price to be held in an escrow account to be identified and established by the Debtors; (d) provides consideration equal to or in excess of the sum of (i) cash in an amount equal to \$25,750,000, (ii) cash equal to the Bid Protections (i.e. 1,272,500), and (iii) \$250,000; and (e) that is otherwise higher or better than the Purchaser APA, as determined in the Debtors’ business judgment; *provided however* that the DIP Agent and Pre-Petition Agent shall have the absolute right to credit bid any portion or all of the Debtors’ outstanding obligations under the DIP Credit Agreement and the Pre-Petition Credit Agreement pursuant to Bankruptcy Code section 363(k), with such amount treated the same as a cash bid of the equivalent amount, and without being required to pay any deposit in respect of such credit bid.²⁷⁶

§ 363(k) allows a lender to offset the amount “that it [credit] bids against the debt owed to the lender.”²⁷⁷ This provides the lender protection against a situation in which a debtor sells an asset for far less than the debt without requiring the lender to pay cash. § 363(k) specifically authorizes a lender to credit bid unless the court orders otherwise. Here, The Limited included the credit bid provision in its Bidding and Sale motion, so it appears no dispute arose as to this provision.

Proposed Sale and Notice Process

The Limited proposed a sale process to ensure its capture of the “full benefit of the Purchaser APA,” including the Sale Timeline detailed above and proposals relating to the form and manner of the Sale.²⁷⁸ The Limited outlined its plan to provide statutory notice (the “Sale Hearing Notice”) under Bankruptcy Rule 2002(a-f) to all parties that the transaction could affect, including the holders of the 30 largest unsecured claims, and asserted its intention to publish the Sale Hearing Notice on the website of The Limited’s proposed noticing and claims agent and in

²⁷⁴ *Id.* at 27.

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 14.

²⁷⁷ *RadLAX Gateway Health Co. v. Amalgamated Bank*, 132 S. Ct. 2065 (2012).

²⁷⁸ Bidding and Sale Motion, *supra* note 240, [13.pdf](#) at 14-17.

The New York Times or *USA Today*.²⁷⁹ The Limited ultimately published a Sale Hearing Notice in *The New York Times* on January 24, 2017.²⁸⁰ The Limited stated that the Sale Hearing Notice was “reasonably calculated to provide interested parties with notice of the Bid Protections Hearing, Sale, and Sale Hearing and an opportunity to respond accordingly.”²⁸¹

Because the Purchase Price included the Purchaser’s assumption of the related Executory Contracts, The Limited also proposed procedures to “facilitate the fair and orderly assumption and assignment of the Executory Contracts” related to the Sale (the “Assumption Procedures”). Generally, the proposed Assumption Procedures outlined a process to provide notice to all Executory Contract counterparties, to inform these counterparties about their rights related to the assumed contracts, and established procedures for these parties to utilize in the case of any potential objections.

Finally, The Limited asked the court to schedule the Bid Protections Hearing no later than January 27, 2017 and asked the court to schedule the Sale Hearing no later than February 16, 2017.²⁸² Along with these proposals, The Limited reminded the court of the Purchaser’s power to terminate if the court failed to enter Bid Protection Order before February 3, 2017 or failed to approve the Sale before February 24, 2017, and restated its proposed Sale Timeline.²⁸³

Request to Proceed Without a Consumer Privacy Ombudsman

The Limited moved the court, pursuant to § 363(b)(1) of the Bankruptcy Code, to allow the Sale to proceed without a consumer privacy ombudsman.²⁸⁴ § 363(b)(1) requires the appointment of a consumer privacy ombudsman when a sale involves personally identifiable information unless the sale is consistent with its policies.²⁸⁵ While the Sale involved customer lists and consumer data, The Limited pointed to a provision in the Purchaser APA that excluded personally identifiable information from the Sale Assets until the parties could cure any potential violation associated with the information.²⁸⁶ Furthermore, The Limited argued its privacy policy

²⁷⁹ *Id.* at 27-28.

²⁸⁰ Proof of Publication of the New York Times Regarding Notice of Hearing to (A) Approve the Asset Purchase Agreement Between the Debtors and the Purchaser, (B) Authorize the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, and (C) Authorize the Assumption and Assignment of Contracts Filed by Limited Stores Company, LLC [117.pdf](#), *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

²⁸¹ Bidding and Sale Motion, *supra* note 240, [13.pdf](#) at 16.

²⁸² *Id.* at 16-17.

²⁸³ *Id.*

²⁸⁴ *Id.* at 29.

²⁸⁵ *Id.*

²⁸⁶ *Id.* at 30.

at the time of filing, publicly available on its website, allowed the transfer of the personally identifiable information.²⁸⁷ The Limited therefore asserted that the information transfer complied with § 363(b)(1) policy and asked the court for its permission to proceed without the appointment of a consumer privacy ombudsman.

Request to Waive the Fourteen-Day Stay Period

The Limited asked the court to waive the fourteen-day stays under Bankruptcy Rules 6004(h) and 6006(d) and declare the requested Order effectively immediately upon its entry.²⁸⁸ Courts allow these waivers when no party objects to the procedure or when an objection to the waiver is overruled.²⁸⁹ The Limited cited the need for “certainty that the Sale will close and the Debtors will realize the benefits of the Sale,” in requesting the court to waive the fourteen-day stay period.²⁹⁰

Objections

Sunrise Creditors

The Sunrise Creditors (“Sunrise”), holders of general unsecured claims against The Limited, submitted a limited objection based on Sunrise’s assertion that The Limited already received a superior bid to the Purchaser’s bid and Sunrise’s belief that awarding the Bid Protections benefited the Purchaser, rather than The Limited and its creditors.²⁹¹ Sunrise Brands, an affiliate of Sunrise, had submitted a bid, and Sunrise claimed its affiliate proposed the best bid.²⁹² According to Sunrise’s objection, Sunrise Brands proposed a price of \$26 million dollars, asked for no bid protections, and offered to let The Limited keep its Avoidance Actions—an asset the Purchaser sought to obtain in its offer.²⁹³ Sunrise sought the court’s approval of the Sunrise Brands bid as the superior bid based on its \$250,000 purchase price increase and its lack of bid protections, arguing the bid provided superior value to the Purchaser’s bid and should receive “stalking horse” status as a result.²⁹⁴ Alternatively, in the event the court found the

²⁸⁷ *Id.*

²⁸⁸ *Id.* at 31.

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ Limited Objection of the Sunrise Creditors to Debtors’ Motion Seeking Approval of Certain Bid Protections in Connection with the Sale of Certain of the Debtors’ Assets [142.pdf](#) at 1–2, , *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Sunrise Creditor Limited Objection].

²⁹² *Id.* at 2.

²⁹³ *Id.* at 3.

²⁹⁴ *Id.* at 4.

Purchaser's bid superior, Sunrise asked the court to remove the Bid Protections from the Purchaser's bid, in the interest of the estates and its creditors.²⁹⁵

Official Committee of Unsecured Creditors

The Committee of Unsecured Creditors ("The Committee") also objected to the Bid Protections, arguing that the Bid Protections were not necessary as required by § 503(b) of the Bankruptcy Code and were excessive under the circumstances.²⁹⁶ Bid protections must be "actually necessary to preserve the value of the estate" under § 503(b).²⁹⁷ The Committee's most forceful argument pointed to the competing Sunrise Brands bid, and its lack of bid protections and similar purchase price, and argued this showed that the Purchaser's Bid Protections were not necessary to maximize the value of the Sale Assets.²⁹⁸

The Resolution of the Court

The court apparently agreed with the positions taken by Sunrise and The Committee, as the court removed both the expense reimbursement and break-up fee associated with the Bid Protections, reducing the minimum overbid amount to \$250,000.²⁹⁹ The court also found that Sunrise Brands was a Qualified Bidder.³⁰⁰

Auction

The Limited held an Auction (the "Auction") on February 21, 2017 that resulted in a victory for the Purchaser.³⁰¹ Sunrise Brands received a "back-up bidder" designation.³⁰² The Purchaser placed its bid, Sunrise responded with a competing bid post-petition, and the

²⁹⁵ *Id.*

²⁹⁶ Objection of the Official Committee of Unsecured Creditors to Debtors' Motion for Entry of an Order (A) Approving Certain Bid Protections in Connection with the Sale of Certain of the Debtors' Assets and (B) Granting Relief [145.pdf](#) at 4-5, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Objection of the Official Committee].

²⁹⁷ *Id.* at 4.

²⁹⁸ *Id.*

²⁹⁹ Order (A) Approving Certain Bid Protections in Connection with the Sale of Certain of the Debtors' Assets, and (B) Granting Relief [157.pdf](#) at 5, , *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Order Approving Bid Protections].

³⁰⁰ *Id.*

³⁰¹ Notice of Auction Results and Identification of Successful Bidder [268.pdf](#) at 1, *In re Limited Stores Co.*, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Auction Results].

³⁰² *Id.*

Purchaser countered with the winning bid at the Auction. The chart below provides a comparison of the three bids:

	<u>Initial Purchaser Bid</u>	<u>Sunrise Objection Bid</u>	<u>Final Purchaser Bid</u>
Purchase Price	\$25.75 million	\$26 million	\$26.75 million
Avoidance Actions?	Yes	No	No
Executory Contracts?	Yes	Yes	Yes
Bid Protections?	3% Break-Up Fee; \$500,000 Expense Reimbursement	None	None

Final Order Approving the Sale

The court approved substantially all of The Limited’s requests related to the Sale and authorized the Sale with the Purchaser—overruling the two objections discussed above.³⁰³ The Cash Portion increased by one million dollars from \$25.75 million to \$26.75 million.³⁰⁴ The court found the Purchaser’s bid to be the best offer and found The Limited provided proper notice regarding the Sale proceedings.³⁰⁵ Additionally, the court held the Purchaser to be a good faith purchaser, found no evidence of a fraudulent transfer, and ruled the Purchaser was not an affiliate or insider of The Limited.³⁰⁶ Furthermore, the court granted successor liability protection to the Purchaser.³⁰⁷ The court also found that the Sale satisfied § 363(f) and allowed The Limited to sell the Sale Assets free and clear of any interest in the property other than the specified Permitted Obligations.³⁰⁸ The court then attached “all Liens, Claims, or other interests” related to the property to the net proceeds of the Sale.³⁰⁹ The court also agreed that an immediate sale was

³⁰³ Order (A) Approving the Asset Purchase Agreement Between the Debtors and the Purchaser, (B) Authorizing the Sale of Certain of Debtors’ Assets Free and Clear of Liens, Claims, and Encumbrances, and Interests, (C) Authorizing the Assumption and Assignment of Executory Contracts, and (D) Granting Related Relief [276.pdf](#), *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Order Approving the Sale].

³⁰⁴ *Id.* [276-1.pdf](#) at Exhibit 1.

³⁰⁵ *Id.* [276.pdf](#) at 3–5.

³⁰⁶ *Id.* at 5-6.

³⁰⁷ *Id.* at 6.

³⁰⁸ *Id.* at 8.

³⁰⁹ *Id.* at 14.

in the best interests of “the Debtors, their estates, their creditors, and other parties in interest” and provided for immediate consummation of the Sale.³¹⁰ Finally, the court directed The Limited to pay the Sale proceeds to the DIP Agent and/or the Pre-Petition Agent.³¹¹

Change of Caption³¹²

Following the court’s approval of the Sale on February 23, 2017, The Limited no longer had ownership over its name.³¹³ According to the order of the court, The Limited was to take all actions necessary and appropriate to effectuate the consummation of the Sale. On March 30, 2017, The Limited filed a motion requesting changes of caption consistent with the following table.³¹⁴

Debtor Name	State of Incorporation	Changed Name
Limited Stores Company, LLC	Delaware	LSC Wind Down, LLC
Limited Stores, LLC	Delaware	LS Wind Down, LLC
The Limited Stores GC, LLC	Ohio	TLSGC Wind Down, LLC

The Limited certified that the OCC and the Office of the United States Trustee had no objection to the change of caption.

On April 4, 2017, the court granted The Limited’s change of caption motion.³¹⁵ The court ruled that the requested relief was in the best interests of the chapter 11 proceeding and directed

³¹⁰ *Id.* at 11.

³¹¹ *Id.* at 23.

³¹² Despite the change of caption, the rest of this paper will still refer to the debtors as “The Limited” to maintain uniformity.

³¹³ Certification of Counsel Regarding Order Approving Name and Caption Changes of the Debtors [359.pdf](#), *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

³¹⁴ *Id.* at 2.

³¹⁵ Order Approving Name and Caption Changes of the Debtors [366.pdf](#), *In re* Limited Stores Co., No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

The Limited to take any reasonable steps to effectuate the implementation of the caption change.³¹⁶

Claims Objections

Pursuant to §§ 501 and 502 of the Bankruptcy Code, The Limited filed four omnibus objections to the following types of claims asserted by certain creditors (the “Claimants”): (a) claims that had been subsequently amended or superseded by later filed claims (the “Amended/Superseded Claims”); (b) claims filed after the applicable bar date (the “Late Claims”); (c) claims that asserted a liability against The Limited that were substantively duplicative of another claim filed on account of the same liability (the “Substantive Duplicate Claims”); (d) claims that improperly asserted § 503(b)(9) administrative status to which the claims were not entitled (the “Reclassified 503(b)(9) Claims”); (e) claims that had been satisfied by The Limited (the “Satisfied Claims”); (f) claims which were overstated and that The Limited believed should be reduced (the “Reduced Claims”); (g) claims besides the Reclassified 503(b)(9) claims that asserted administrative or priority status to which the claims were not entitled (the “Reclassified Claims”); (h) claims that improperly asserted administrative priority for stub rent (the “Stub Rent Claims”); and (i) claims that asserted a liability against the debtors where no liability existed (the “No Liability Claims”) (collectively, the “Disputed Claims”³¹⁷).

Basis for Relief

§ 502(a) of the Bankruptcy Code allows a debtor to object to claims or interests filed under § 501.³¹⁸ Initially, the burden of proof for determining the validity of claims rests on the claimant—the claimant must allege facts to support the claim.³¹⁹ If the claimant meets this burden, the claim is *prima facie* valid, and the burden shifts to the objector to provide sufficient

³¹⁶ *Id.* at 3.

³¹⁷ The Disputed Claims are located in the following documents: Debtors’ First Omnibus Objection (Non-Substantive) to Claims Pursuant to 11 U.S.C. §§ 501(a) and 502(b), and Fed. R. Bankr. P. 3003 (c) (2) and 3007 to Certain Amended/Superseded Claims and Late Claims (“Debtors’ First Omnibus Objection to Claims”) [625.pdf](#), [625-2.pdf](#) at Exhibit 1; Debtors’ Second Omnibus Objection (Non-Substantive) to Claims Pursuant to 11 U.S.C. §§ 501(a) and 502(b), and Fed. R. Bankr. P. 3003 (c) (2) and 3007 to Certain Amended/Superseded Claims and Late Claims (“Debtors’ Second Omnibus Objection to Claims”) [626.pdf](#), [626-2.pdf](#) at Exhibit 1; Debtors’ Third Omnibus Objection (Substantive) to Claims Pursuant to 11 U.S.C. §§ 501(a) and 502(b), and Fed. R. Bankr. P. 3003 (c) (2) and 3007 to Certain Substantive Duplicate Claims, Reclassified 503(b)(9) Claims, Satisfied Claims, Reduced Claims, and Reclassified Claims (“Debtors Third Omnibus Objection to Claims”) [627.pdf](#), [627-2.pdf](#) at Exhibit 1; Debtors’ Fourth Omnibus Objection (Substantive) to Claims Pursuant to 11 U.S.C. §§ 501(a) and 502(b), and Fed. R. Bankr. P. 3003 (c) (2) and 3007 to Certain Stub Rent Claims and No Liability Claims (“Debtors’ Fourth Omnibus Objection to Claims”) [628.pdf](#), [628-2.pdf](#) at Exhibit 1.

³¹⁸ 11 U.S.C. § 502(a) <https://perma.cc/5YG2-MQAZ>.

³¹⁹ Debtors’ First Omnibus Objection to Claims, *supra* note 317, [625.pdf](#) at 4 (citing *In re Allegheny Int’l Inc.*, 954 F.2d 167, 173-74 (3d. Cir. 1992)).

facts to negate at least one of the allegations of the filed claim. If the objector produces this evidence, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence.

Amended/Superseded Claims

Several of the Claimants (the “Amended/Superseded Claimants”) filed claims and later amended or modified these claims seeking to recover the same underlying alleged liability as the original claim.³²⁰ The Limited asserted that “only the last amended claim [should] survive [and] all previous claims that were amended by such claim” should be disallowed.³²¹ According to The Limited, this would allow each of the Amended/Superseded Claimants to retain their respective claims of liability while clarifying and simplifying the claims register.³²²

Late Claims

The court previously established April 5, 2017 (the “General Bar Date”) as the deadline for the Claimants to file written proofs of claims against The Limited, and established July 17, 2017 (the “Governmental Bar Date”) as the deadline for government creditors to file written proofs of claims (collectively, the “Bar Date”).³²³ The Limited objected to the Late Claims because the claimants filed these claims after the Bar Date.³²⁴ Accordingly, The Limited asked the court to disallow the Late Claims and expunge them in their entirety.

Substantive Duplicative Claims

The Limited identified certain Substantive Duplicative Claims that asserted a liability duplicated in one or more other claims (with some differences) filed by the same claimant (the “Substantive Duplicative Claimants”).³²⁵ According to the objection, if the court allowed the Substantive Duplicative Claims, the Substantive Duplicative Claimants would receive multiple recoveries based upon a single liability—thus, The Limited asked the court to disallow the Substantive Duplicative Claims.³²⁶

³²⁰ *Id.* at 5.

³²¹ *Id.* at 6; *see also* Debtors’ Second Omnibus Objection to Claims, *supra* note 317, [626.pdf](#) at 6.

³²² Debtors’ First Omnibus Objection to Claims, *supra* note 317, [625.pdf](#) at 5–6.

³²³ *Id.* at 3.

³²⁴ *Id.* at 7; *See also* Debtors’ Second Omnibus Objection to Claims, *supra* note 317, [626.pdf](#) at 7.

³²⁵ Debtors’ Third Omnibus Objection to Claims, *supra* note 317, [627.pdf](#) at 5.

³²⁶ *Id.* at 6.

Reclassified 503(b)(9) Claims

The Limited asserted that the Reclassified 503(b)(9) Claims were not entitled to administrative priority under § 503(b)(9) of the Bankruptcy Code.³²⁷ § 503(b)(9) grants administrative priority to claims based on administrative expenses a debtor incurs when purchasing goods in the ordinary course of its business within twenty days of commencing a chapter 11 case.³²⁸ According to The Limited, the Reclassified 503(b)(9) claims related to purchased goods that had been returned to the sellers, claims for services provided, claims for goods received out of the twenty day period, and claims for unused balances on gift cards—bases not included in § 503(b)(9).³²⁹ As a result, The Limited objected to the Reclassified 503(b)(9) claims and asked the court to reclassify these claims to general unsecured claims.

Satisfied Claims

To avoid duplicative payments, The Limited objected to the claims it believed it already satisfied.³³⁰ The Limited moved the court to reduce the Satisfied Claims to eliminate the satisfied portions.

Reduced Claims

The Limited objected to certain claims it believed were inaccurate.³³¹ These Reduced Claims reflected amounts owed to three taxing authorities, the Ohio Department of Taxation, New York State, and the Pennsylvania Department of Revenue.³³² Based on negotiations with each of these authorities, The Limited asserted its reasonable belief that each of these Reduced Claims would be “significantly reduced.” The Limited asked the court to modify these Reduced Claims to reflect the negotiated amount.

³²⁷ Declaration of Timothy D. Boates in Support of the Debtors’ Third Omnibus Objection (Substantive) to Claims Pursuant to 11 U.S.C. §§ 501(a) and 502(b), and Fed. R. Bankr. P. 3003 (c) (2) and 3007 to Certain Substantive Duplicate Claims, Reclassified 503(b)(9) Claims, Satisfied Claims, Reduced Claims, and Reclassified Claims (“Declaration of Boates in Support of the Debtors’ Third Omnibus Objection to Claims”) [627-3.pdf](#) at 4, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

³²⁸ 11 U.S.C. § 503(b)(9) <https://perma.cc/3W9F-6PCJ>.

³²⁹ Declaration of Boates in Support of the Debtors’ Third Omnibus Objection to Claims, *supra* note 327, [627-3.pdf](#) at 4.

³³⁰ Debtors’ Third Omnibus Objection to Claims, *supra* note 317, [627.pdf](#) at 7.

³³¹ *Id.* at 8.

³³² Declaration of Boates in Support of the Debtors’ Third Omnibus Objection to Claims, *supra* note 327, [627-3.pdf](#) at 6.

Reclassified Claims

Several of the Disputed Claims asserted administrative priority status under statutes other than § 503(b)(9), and The Limited objected to the administrative status of these Reclassified Claims.³³³ The Limited objected to the Reclassified Claims because it believed these claims related to unused customer gift card balances, services performed with no other basis for priority, claims for wage priority on behalf of non-employees, claims for returned customer goods, claims for contributions to benefit plans that were merely claims for unsecured deferred compensation plans, and claims for subrogation to a governmental entity’s statutory priority where no such subrogation is allowed.³³⁴ Because it did not consider any of these categories to qualify for administrative priority, The Limited objected to the Reclassified Claims and asked the court to reclassify them as general unsecured claims.³³⁵

Stub Rent Claims

The Limited also sought to reclassify the Stub Rent Claims based on its assertion that these claims related to rents charged after The Limited vacated and returned possession of each of the premises at issue.³³⁶ Under § 503(b)(1) and related case law, a commercial lessor’s claim only receives administrative priority if the lease provides an “actual and necessary benefit to the debtor in the operation of its business.”³³⁷ According to the objection, The Limited did not occupy—or receive any benefit from—any of these locations after the Petition Date and asked the court to modify the classification of the Stub Rents to general unsecured status.

No Liability Claims

The Limited moved to expunge the No Liability Claims based on its belief that these claims “erroneously” asserted liabilities.³³⁸ According to its objection, The Limited underwent reasonable efforts to review each of the No Liability Claims, found no basis for liability in any of the claims, and thus asked the court to disallow and expunge the No Liability Claims.³³⁹

³³³ Debtors’ Third Omnibus Objection to Claims, *supra* note 317, [627.pdf](#) at 8.

³³⁴ Declaration of Boates in Support of the Debtors’ Third Omnibus Objection to Claims, *supra* note 327, [627-3.pdf](#) at 7.

³³⁵ *Id.* at 7.

³³⁶ Debtors’ Fourth Omnibus Objection to Claims, *supra* note 327, [628.pdf](#) at 5.

³³⁷ *Id.* at 6 (citing *In re Goody’s Family Clothing Inc.*, 610 F.3d 812, 818 (3d. Cir. 2010)).

³³⁸ *Id.*

³³⁹ *Id.* at 6–7.

Responses to the Objections

The Limited received multiple responses to its objections.

Response of Jean Paulus

Jean Paulus claimed she missed the Bar Date because she followed The Limited's instructions in attempting to return two sweaters.³⁴⁰ Paulus asked the court to include her claim of \$50.84 in the chapter 11 proceedings.

Response of Trinh Ngo

Trinh Ngo claimed she missed the Bar Date because she was a single mom busy raising her two sons.³⁴¹ Ngo asked the court to reconsider including her claim related to \$696.24 in unused gift card balances³⁴² in the chapter 11 proceedings.

Response of Anoop Mathew

Anoop Mathew claimed he missed the Bar Date because The Limited failed to adequately notify him of the chapter 11 proceedings.³⁴³ He asked the court to include his claim related to a \$100 unused gift card balance in the chapter 11 proceedings.

Response of Anne Duncan

Anne Duncan objected to the reclassification of her claim as unsecured based on her belief that The Limited fraudulently induced her to return merchandise worth \$61.16, knowing it would not reimburse her return.³⁴⁴ Duncan based her belief on The Limited's decision to continue offering return shipping labels up to December 19th, 2016, less than a month before The Petition Date. Duncan thus moved the court to allow her claim to retain its administrative status.

Response of the Pennsylvania Department of Revenue

The Pennsylvania Department of Revenue asserted that The Limited's objection to its claim for unpaid taxes lacked merit and should not overcome the *prima facie* validity of its

³⁴⁰ Response of Jean Paulus [655.pdf](#) at 1, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

³⁴¹ Response of Trinh Ngo [656.pdf](#), *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

³⁴² [Proof of Claim](#)

³⁴³ Response of Anoop Mathew [657.pdf](#) at 1, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

³⁴⁴ Response of Anne Duncan [654.pdf](#) at 1, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

claim.³⁴⁵ The Pennsylvania Department of Revenue asked the court not to reduce its \$688,762.90 claim to zero or reclassify it as a general unsecured claim.

Response of the Tennessee Department of Revenue

The Tennessee Department of Revenue also asserted that The Limited's objection to its two claims for unpaid taxes lacked merit and should not overcome the *prima facie validity* of its claim.³⁴⁶ The Tennessee Department of Revenue asked the court to allow its two claims worth \$633,795.14 as originally filed.

Final Order

The court ruled in favor of Paulus, Ngo, Mathew, and Duncan, while both the taxing authorities ultimately decided to consent to The Limited's objections.³⁴⁷ Other than these exceptions, the court granted The Limited's various objections.³⁴⁸

³⁴⁵ Response of Commonwealth of Pennsylvania, Department of Revenue to Debtors' Third Omnibus Objection (Substantive) to Claims Pursuant to §§ 501(a) and 502(b), and Fed. R. Bankr. P. 3003(c)(2) and 3007 to Certain Substantive Duplicate Claims, Reclassified 503(b)(9) Claims, Satisfied Claims, Reduced Claims, and Reclassified Claims [635.pdf](#), *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

³⁴⁶ Response by the Tennessee Department of Revenue to the Debtors' Fourth Omnibus Objection to Claims [658.pdf](#), *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

³⁴⁷ Order Granting Debtors' First Omnibus Objection (Non-Substantive) to Claims Pursuant to 11 U.S.C. §§ 501(a) and 502(b), and Fed. R. Bankr. P. 3003 (c) (2) and 3007 to Certain Amended/Superseded Claims and Late Claims ("Order Granting Debtors' First Omnibus Objection to Claims") [689.pdf](#), [689-1.pdf](#) at Exhibits A & B, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017); Order Granting Debtors' Second Omnibus Objection (Non-Substantive) to Claims Pursuant to 11 U.S.C. §§ 501(a) and 502(b), and Fed. R. Bankr. P. 3003 (c) (2) and 3007 to Certain Amended/Superseded Claims and Late Claims ("Order Granting Debtors' Second Omnibus Objection to Claims") [690.pdf](#), [690-1.pdf](#) at Exhibits A & B, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017); Order Granting Debtors' Third Omnibus Objection (Substantive) to Claims Pursuant to 11 U.S.C. §§ 501(a) and 502(b), and Fed. R. Bankr. P. 3003 (c) (2) and 3007 to Certain Substantive Duplicate Claims, Reclassified 503(b)(9) Claims, Satisfied Claims, Reduced Claims, and Reclassified Claims (Order Granting Debtors' Third Omnibus Objection to Claims") [691.pdf](#), [691-1.pdf](#) at Exhibits A-E, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017); Order Granting Debtors' Fourth Omnibus Objection (Substantive) to Claims Pursuant to 11 U.S.C. §§ 501(a) and 502(b), and Fed. R. Bankr. P. 3003 (c) (2) and 3007 to Certain Stub Rent Claims and Liability Claims ("Order Granting Debtors' Fourth Omnibus Objection to Claims") [692.pdf](#), [692-1.pdf](#) at Exhibits A & B, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

³⁴⁸ Order Granting Debtors' First Omnibus Objection to Claims, *supra* note 347, [689.pdf](#); Order Granting Debtors' Second Omnibus Objection to Claims, *supra* note 347, [690.pdf](#); Order Granting Debtors' Third Omnibus Objection to Claims, *supra* note 347, [691.pdf](#); Order Granting Debtors' Fourth Omnibus Objection to Claims, *supra* note 347, [692.pdf](#).

Liquidation Plan

Following the completion of the Sale, The Limited filed a Plan of Liquidation (the “Plan”) on August 16, 2017.³⁴⁹ On the same day, The Limited filed a disclosure statement (the “Disclosure Statement”) in connection with its Plan.³⁵⁰ Over the course of the next three months, the Plan underwent two different modifications before it was approved, and the Disclosure statement underwent one modification before it was approved by the court.

Original Contents of the Plan

The Plan provided for the wind down of The Limited’s affairs, continued liquidation of all its remaining assets and the distribution of the net proceeds that were realized from the Sale.³⁵¹ The net proceeds received by The Limited upon the sale of their remaining assets were to be used to pay the DIP Facility Claim and Prepetition Secured Claim in full.³⁵² The remaining proceeds from the Sale were to be used to make payments to holders of Allowed Claims. The Plan called for the appointment of a Plan Administrator who would finalize the wind down of The Limited’s affairs, resolve any disputed claims, implement the terms of the Plan, and make distributions to holders of Allowed Claims, defined *infra*. The Plan also called for the appointment of a General Unsecured Claims (“GUC”) Trustee to resolve any GUC related claims and implement the Plan as it related to the GUC Trust and the GUC Trust Agreement. The Plan contained thirteen articles that laid out the different aspects of the Plan and how it would be carried out.

Article 1: Definitions

Article I contained general definitions of terms that would be useful in helping determine what the contents of the Plan were and identified the parties who had some role in carrying out the Plan.³⁵³ Perhaps the most important of these definitions that plays into voting classification is the “Allowed Claims” definition. “Allowed Claim” means:³⁵⁴

³⁴⁹ Joint Chapter 11 Plan of Liquidation of LSC Wind Down, LLC f/k/a Limited Stores Company, LLC and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code [524.pdf](#) at 1, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Original Plan of Liquidation].

³⁵⁰ Disclosure Statement with Respect to Joint Chapter 11 Plan of Liquidation of LSC Wind Down, LLC, f/k/a Limited Stores Company, LLC and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code [525.pdf](#) at 1, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Original Disclosure Statement].

³⁵¹ Original Plan of Liquidation, *supra* note 349, [524.pdf](#) at 2.

³⁵² Original Disclosure Statement, *supra* note 350, [525.pdf](#) at 5.

³⁵³ Original Plan of Liquidation, *supra* note 349, [524.pdf](#) at 3–17.

³⁵⁴ *Id.* at 4.

a Claim or any portion thereof (a) that has been allowed by a final order, or (b) as to which, on or by the Effective Date, (i) no proof of claim has been filed with the Bankruptcy Court and (ii) the liquidated and noncontingent amount of which is schedules, other than a claim that is scheduled in an unknown amount or as disputed, or (c) for which a proof of claim in a liquidated amount has been timely filed with the Bankruptcy Court pursuant to the Bankruptcy Code, any final order of the Bankruptcy Court or other applicable bankruptcy law, and as to which either (i) no objection to its allowance has been filed within the periods of limitation fixed by the Plan, the Bankruptcy Code or by any order of the Bankruptcy Court or (ii) any objection to its allowance has been settled or withdrawn, or has been denied by a final order or (d) that is expressly allowed in a liquidated amount in the Plan.

Another important definition was Impaired Claims. An Impaired Claim “refers to any claim or interest that is impaired within the meaning of § 1124 of the Bankruptcy Code.”³⁵⁵ § 1124 of the Bankruptcy Code provides that a class of claims or interests is impaired under a plan unless the plan does not alter any rights of the claim holder or cures any default that occurred before or after the commencement of the case, reinstates the maturity or such claim or interest as it was before the default, compensates the holder of the claim or interest for any damages, compensates the holder of such claim or interest for any pecuniary loss incurred, and does not alter the legal rights to which the claim or interest entitled the holder of such claim or interest.³⁵⁶

Perhaps the most important definition was the Effective Date. The Effective Date was the first business day on which the conditions set forth in section 10.2, discussed *infra*, of the Plan had been satisfied or waived as provided in Section 10.3.³⁵⁷

Article II: Classification of Claims and Interests

Each claim or interest was put in a particular Class for the “purposes of voting on the Plan and receiving distributions pursuant to the Plan only to the extent that such claim or interest is an Allowed Claim in that Class and such claim or interest has not yet been paid, released, or otherwise settled prior to the Effective Date.”³⁵⁸ The claims were placed in classes pursuant to § 1122 of the Bankruptcy Code, which provides for the placement of claims in classes, so long as each claim or interest in each class is substantially similar to the other claims or interest in the

³⁵⁵ *Id.* at 11.

³⁵⁶ 11 U.S.C. § 1124 <https://perma.cc/ZR69-AF6M>.

³⁵⁷ Original Plan of Liquidation, *supra* note 349, [524.pdf](#) at 9.

³⁵⁸ *Id.* at 11.

class.³⁵⁹ Each class of claims must either have voted to accept the Plan or reject the Plan.³⁶⁰ Even if one Class of claims did not accept the Plan, so long as one Impaired Class accepted the Plan to satisfy § 1126(a)(1) and the Plan was fair and equitable, the court could confirm the Plan under § 1129(b), the cram down provision.³⁶¹ The following table illustrates the class, description, impairment, and voting status of the Allowed Claims.³⁶²

CLASS	DESCRIPTION	IMPAIRMENT & TREATMENT	VOTING STATUS
Unclassified	DIP Claims	Unimpaired & No Recovery Under the Plan	Not entitled to vote
Unclassified	Administrative Claims	Unimpaired & No Recovery Under the Plan	Not entitled to vote
Unclassified	Professional Fee Claims	Unimpaired & \$1,142,000 Unpaid with Full Recovery Expected	Not entitled to vote
Unclassified	Priority Tax Claims	Unimpaired & \$1,306,518.00 Unpaid with Full Recovery Expected	Not entitled to vote
Class 1	Prepetition Revolving Secured Claims	Unimpaired & No Recovery Under the Plan	Not entitled to vote (deemed to accept)
Class 2	Prepetition Term Secured Claims	Unimpaired & No Recovery Under the Plan	Not entitled to vote (deemed to accept)

³⁵⁹ 11 U.S.C. § 1122 <https://perma.cc/QVQ3-G8JB>.

³⁶⁰ Original Disclosure Statement, *supra* note 350, [525.pdf](#) at 5.

³⁶¹ *Id.* at 6; This would be invoking what would be called a “cramdown provision” of the Bankruptcy Code where the court would look to make sure the Plan is fair and equitable within the meaning of § 1129(b)(2) of the Bankruptcy Code. As long as the one impaired class votes to accept the plan and the debtors shows the plan is fair and equitable, the court may approve the Plan.

³⁶² Original Plan of Liquidation, *supra* note 349, [524.pdf](#) at 18.

Class 3	Liberty Mutual Secured Claim	Impaired & \$576,185.00 Unpaid with Full Recovery Expected	Entitled to Vote
Class 4	Miscellaneous Secured Claims	Unimpaired & No Recovery Under the Plan	Not entitled to vote (deemed to accept)
Class 5	Priority WARN Claim	Impaired & \$810,625.00 Unpaid with Full Recovery Expected	Entitled to vote
Class 6	Priority Non-Tax Claims	Impaired & \$46,997 Unpaid with Full Recovery Expected	Entitled to vote
Class 7	General Unsecured Claims	Impaired & 153,409,153.00 with Less than 1% Recovery Expected	Entitled to vote
Class 8	Subordinated Claims	Impaired & Unknown Amount with No Expected Recovery	Not entitled to vote (deemed to reject)
Class 9	Interests	Impaired & N/A	Not entitled to vote (deemed to reject)

Article III: Identification of Classes of Claims and Interests Impaired and Not Impaired by the Plan

Since the claims and interests in Class 1, Class 2, and Class 4 were not impaired by the Plan, those claim holders were deemed to have accepted the Plan.³⁶³ Class 3, Class 5, Class 6, and Class 7 were impaired under the Plan and were entitled to vote on the Plan. Classes 8 and 9 were impaired under the Plan and would not receive any distributions under the Plan, and thus were deemed to have rejected the Plan.

³⁶³ *Id.* at 19.

Article IV: Provisions for Treatment of Unclassified Claims, Administrative Claims, and Priority Tax Claims

Section 4.1: DIP Facility Claim

First, the DIP Facility had been paid in full and there were no claims by the DIP Agent and DIP Lenders against The Limited. As discussed above, the proceeds from the Sale were used first to repay the DIP Facility, and thus there was no reason for the DIP claims to have been granted voting status.

Section 4.2: Administrative Claims – Professional Claims

Next, the Plan provided for payment of the Professional Fee Claims. All final requests for payment of the Professional Fee Claims were to be made by an application that was filed with the court and served on counsel to the Plan Administrator, counsel to the Prepetition Agent, and counsel to the U.S. Trustee no later than forty-five calendar days after the Effective Date. It also provided that all Professional Fee Claims should be paid by the Plan Administrator.³⁶⁴

Section 4.3: Administrative Claims – Substantial Contribution Compensation and Expenses Bar Date

The next section provided that any person who requested compensation or reimbursement for making a substantial contribution during the chapter 11 proceedings pursuant to § 503(b)(3), (4), and (5) of the Bankruptcy Code was required to file an application with the clerk of the court within thirty days after the Effective Date. Any payment that was to be made was to be paid by the Plan Administrator within 30 days of the order by the court.

Section 4.4: Administrative Claims – Allowed Section 503(b)(9) Claims

The Plan Administrator was to pay the Allowed Section 503(b)(9) Claims in cash as soon as possible after the Effective Date. Section 503(b)(9) claims were those that arose before the chapter 11 proceedings as a result of the sale by a party to The Limited.³⁶⁵

Section 4.5: Administrative Claims – Allowed Administrative Tax Claims under Section 503(b)(1)(B) and (C) of the Bankruptcy Code

Any other requests for payment of an Administrative Claim other than Professional Fee Claims, DIP Facility Claims, and Administrative Tax Claims under §§ 503(b)(1)(B) and (C) of the Bankruptcy Code were to be filed with the court and served on counsel to the Plan Administrator. The Plan further provided that unless the Plan Administrator objected to an Administrative Claim, that such Administrative Claim would be deemed an Allowed

³⁶⁴ *Id.* at 20.

³⁶⁵ 11 U.S.C. § 503(b)(9) <https://perma.cc/DYX2-VRH8>.

Administrative Claim in the amount requested.³⁶⁶ Any of these Claims were to be paid in full by the Plan Administrator.

Section 4.6: Other Administrative Claims Bar Date

Any other requests for payments of Administrative Claims other than those listed above were to have been filed with the court and served on counsel to the Plan Administrator no later than thirty days following the Effective Date. All the Allowed Administrative Claims were to be paid in full in cash by the Plan Administrator.

Section 4.7: Priority Tax Claims

Lastly, this article called for the payment of Allowed Priority Tax Claims by the Plan Administrator, at the Plan Administrator's Option. The Allowed Priority Tax Claims were to be paid as follows: (a) cash equal to the unpaid portion of the face amount of such Allowed Priority Tax Claim on the later of the Effective Date or thirty calendar days following the date on which such Priority Tax Claims becomes and Allowed Priority Tax Claim; (b) in regular installment payments in cash over a period not exceeding three years after the Petition Date; (c) or another way in which the holder of an Allowed Priority Tax Claim and the Plan Administrator agreed upon in writing.

Article V: Provisions for Treatment of Claims and Interests

Class 1 & Class 2

The holders of these claims were paid in full prior to the Petition Date.³⁶⁷ Since the holders of the Prepetition Revolving Secured Claim and the Prepetition Term Secured Claim had no further Claim against The Limited, the holders of those claims were to receive no distributions under the Plan.

Class 3: Liberty Mutual Secured Claims

The Liberty Mutual Secured Claim was the secured claim of Liberty Mutual Insurance Company with respect to known, liquidated, contingent and unliquidated claims under The Limited's workers compensation program that was collateralized by the cash held by Liberty Mutual in the amount of \$852K.³⁶⁸ The Plan provided that, except to the extent that a holder of an Allowed Class 3 Liberty Mutual Secured Claim agreed to a less favorable treatment, Liberty Mutual was to receive an amount agreed upon by The Limited, the Plan Administrator, and

³⁶⁶ Original Plan of Liquidation, *supra* note 349, [524.pdf](#) at 21.

³⁶⁷ *Id.*

³⁶⁸ *Id.* at 12.

Liberty Mutual from the cash held by Liberty Mutual to collateralize the Liberty Mutual Secured Claim.³⁶⁹

Class 4: Miscellaneous Secured Claims

The claims in Class 4 were any secured claims other than the DIP Facility Claim, the Prepetition Revolving Secured Claim, the Prepetition Term Secured Claim, and the Liberty Mutual Secured Claim.³⁷⁰ The holders of the Class 4 claims were to receive, at the discretion of the Plan Administrator, cash in an amount equal to the less of (a) the amount of Allowed Secured Claim and (b) the value of the debtors' property securing such Allowed Secured Claim that was currently in the possession of The Limited or the GUC Trust minus the amount of claims secured by such property with legal priority senior to the lien property of the holder of such Allowed Class 4 claim.³⁷¹ The Plan Administrator also had the authority to deliver, in lieu of cash, the property securing such Allowed Class 4 claim or any other treatment that would unimpair the Allowed Class 4 claim.

Class 5: Priority WARN Claims

The Class 5 claim was any claim of any person under the Worker Adjustment and Retraining Notification Act, or other similar state statute, that is of the kind specified in § 507(a)(4) or (5) of the Bankruptcy Code.³⁷² On the Petition Date, a former employee of The Limited, Kaitlin O'Rourke (the "WARN Plaintiff"), and approximately 175 other former employees (the "WARN Class Members") filed suit against The Limited under the WARN Act³⁷³ (the "WARN Action").³⁷⁴ The WARN Action accused The Limited of violating the

³⁶⁹ Original Disclosure Statement, *supra* note 350, [525.pdf](#) at 24.

³⁷⁰ Original Plan of Liquidation, *supra* note 349, [524.pdf](#) at 12.

³⁷¹ *Id.* at 21.

³⁷² *Id.* at 14.

³⁷³ "The Worker Adjustment and Retraining Notification Act (WARN) protects workers, their families, and communities by requiring employers with 100 or more employees (generally not counting those who have worked less than six months in the last 12 months and those who work an average of less than 20 hours a week) to provide at least 60 calendar days advance written notice of a plant closing and mass layoff affecting 50 or more employees at a single site of employment. WARN makes certain exceptions to the requirements when layoffs occur due to unforeseeable business circumstances, faltering companies, and natural disasters. Advance notice gives workers and their families some transition time to adjust to the prospective loss of employment, to seek and obtain other jobs, and if necessary, to enter skill training or retraining that will allow these workers to compete successfully in the job market. Regular federal, state, local, and federally-recognized Indian Tribal government entities that provide public services are not covered." <https://www.dol.gov/general/topic/termination/plantclosings> <https://perma.cc/V4NM-QUSQ>.

³⁷⁴ Joint Motion of Proposed Class Representative and Defendant, Pursuant to Section 105 of the Bankruptcy Code and Bankruptcy Rules 9019 and 7023 to: (I) Approve the Settlement Agreement Pursuant to Bankruptcy Rule 9019, (II) Preliminarily Approve the Settlement Agreement Pursuant to Bankruptcy Rule 7023, (III) Certify the WARN Class for Settlement Purposes, Including the Appointment of Class Counsel and the Class Representative, (IV)

WARN Act because it terminated at least 175 employees on December 2, 2016 without providing sixty days advance written notice as required by the WARN Act. The Limited denied the allegations. Because of the significant costs the proposed litigation would entail, both The Limited and the WARN Class Members reached a settlement agreement (the “Settlement Agreement”).³⁷⁵ The Settlement Agreement required The Limited to pay the WARN Plaintiff and the WARN Class Members a total sum of \$810,625.00 (the “Settlement Payment”).³⁷⁶ The WARN Plaintiff and the WARN Class Members agreed to take a lesser sum than they would have received if they succeeded at trial because The Limited advanced a defense based on the “faltering company” and “unforeseeable business circumstances” exceptions to the WARN Act.³⁷⁷ This defense, combined with the allegations of the WARN Action, caused both parties to feel uncertain about their respective chances of succeeding at trial—thus, the parties decided to pursue the Settlement Agreement.

The Limited and the WARN Class Members jointly moved the court to approve the Settlement Agreement pursuant to Bankruptcy Rule 9019.³⁷⁸ Bankruptcy Rule 9019 authorizes a bankruptcy court to approve a settlement after notice and a hearing.³⁷⁹ The court approved the Settlement in full and authorized the Settlement Payment.³⁸⁰

The Plan called for the holder of each Class 5 claim to receive, at the discretion of the Plan Administrator, and following payment of all Allowed Administrative Claims, cash in the amount of the Allowed Priority WARN Claim, the holder’s pro rata share of cash in the agreed upon amount, or cash in the amount of each allowed Priority WARN Claim as fixed by the

Approve the Form and Manner of Notice to Class Members of the Settlement, (V) Schedule a Fairness Hearing to Consider Final Approval of the Settlement Agreement, (VI) Finally Approve the Settlement Agreement Following the Fairness Hearing, and (VII) Grant Related Relief at 5 (“Joint Motion to Approve the WARN Settlement Agreement”) [620.pdf](#), *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

³⁷⁵ *Id.* at 6.

³⁷⁶ *Id.* at 7.

³⁷⁷ *Id.* at 3.

³⁷⁸ *Id.* at 10 (The two parties moved for additional relief—however this relief is outside the scope of this paper.)

³⁷⁹ The parties also cited to the following case law to support their settlement: *Myers v. Martin* (*In re Martin*), 91 F.3d 389, 393 (3d Cir. 1996) (“[C]ompromises are favored in bankruptcy.”); *In re Culmtech, LTD.*, 118 B.R. 237, 238 (Bankr. M.D. Pa. 1990) (“[Co]mpromises are favored in bankruptcy and . . . much of litigation in bankruptcy estates results in settlements.”).

³⁸⁰ Final Order Approving the Warn Settlement Under Fed. R. Civ. P. 23, Fed. Bankr. R. 7023, and Bankr. R. 9019 (“Final Order Approving the Warn Settlement”), [748.pdf](#), *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

court.³⁸¹ At the time the Plan was filed, the Settlement Agreement had not been reached, so there was no amount fixed by the court.

Class 6: Priority Non-Tax Claims

A Priority Non-Tax Claim was any claim of a kind specified in § 507(a)(3), (4), (5), (6), (7), or (9) of the Bankruptcy Code, but not including the Priority WARN Claim or Administrative Claims.³⁸² Each holder of Class 6 claims was to either be paid in full in cash to the extent that it was available following payment of the previous Classes' claims, or to the extent that there were not sufficient GUC Trust assets to pay the claims in full, each holder of Class 6 claims was to receive its pro rata share of any available cash after payment in full of the previous Classes claims.

Class 7: General Unsecured Claims

The General Unsecured Claim was any claim that was not an Administrative Claim, Priority Claim, Secured Claim, or Miscellaneous Secured Claim, and specifically included, without limitation, any unsecured deficiency claim or any holder of a Miscellaneous Secured Claim.³⁸³ A holder of a Class 7 claim was to receive its pro rata share of GUC Trust Interests after payment in full of GUC Trust Expenses and following payment by The Limited of the previous Classes' claims.³⁸⁴

Class 8: Subordinated Claims

A Subordinated Claim was, collectively, any non-compensatory penalty claim and any other claim that was subordinated to General Unsecured Claim.³⁸⁵ The holders of a Class 8 claim were not entitled to receive any payment or property interest under the Plan.³⁸⁶

Class 9: Interests

Interests were the rights of any current or former holder or owner of any shares of common stock, preferred stock, or any other equity of The Limited that was authorized and

³⁸¹ *Id.* at 22.

³⁸² *Id.* at 14.

³⁸³ *Id.* at 10.

³⁸⁴ *Id.* at 22.

³⁸⁵ *Id.* at 16.

³⁸⁶ *Id.* at 22.

issued prior to the confirmation date.³⁸⁷ The holders of Interests were to have their Interests extinguished against The Limited and were to receive no distributions under the Plan.³⁸⁸

Article 6: Means for Implementation of the Plan

Section 6.1: The Liquidating Debtors' Post Effective Date Corporate Affairs

Following the Effective Date, the Plan was to be implemented by the establishment of the Plan Administrator, the establishment of the GUC Trust, and the making of distributions by the Plan Administrator and the GUC Trust.³⁸⁹ The Plan Administrator and GUC Trustee were the primary implementers of the Plan.³⁹⁰ The Plan called for the termination of The Limited's directors, officers, and managers without the need for any approval on the Effective Date. Further, on the Effective Date, The Limited was to maintain its corporate form until the Plan Administrator decided how to proceed.³⁹¹ The certificate of incorporation, bylaws, and articles of incorporation were deemed to be amended to reflect the provisions of the Plan.³⁹² When the court confirmed the Plan, the confirmation was to constitute authorization for The Limited, the Plan Administrator, and the GUC Trustee to take all actions necessary to implement all provisions of the Plan.

Section 6.2: The Plan Administrator

Next, the Plan provided that on the Effective Date, the debtors and each of their estates were to fully vest in the applicable Liquidating Debtor for purposes of administration all the respective rights, title, and interest in the estate assets. The Liquidating Debtors were defined as the debtors on or after the Effective Date.³⁹³ All of the estate assets of The Limited were to vest in the applicable Liquidating Debtor free and clear of all claims, liens, encumbrances, or interests. The Plan Administrator was to be the exclusive representative of each of the Liquidating Debtors' estates.

Under the Plan, the Plan Administrator was to have the sole authority and rights on behalf of each Liquidating Debtor and the respective estates to carry out the Plan without the approval of the court. Some of these responsibilities included resolving objections to the different Classes

³⁸⁷ *Id.* at 11.

³⁸⁸ *Id.* at 22.

³⁸⁹ *Id.* at 23.

³⁹⁰ Original Disclosure Statement, *supra* note 350, [525.pdf](#) at 22.

³⁹¹ Plan Administrator was deciding either to allow the debtor to maintain its current corporate form or to merge, dissolve, or otherwise terminate the existence and complete the winding down of the debtor.

³⁹² Original Plan of Liquidation, *supra* note 349, [524.pdf](#) at 24.

³⁹³ *Id.* at 12.

of claims, calculating the appropriate distributions for each of the claims, making any sales of the different estate assets as appropriate to carry out the Plan, winding down the affairs of the Liquidating Debtors, paying the Plan Administration Expenses, filing any and all tax returns for the Liquidating Debtors, and executing any and all documents which were necessary to effectuate the provisions of the Plan.³⁹⁴ The Plan also provided that the Plan Administrator had the authority to decide how to pursue any preserved claims.³⁹⁵ The Plan Administrator could have been removed by court order and had the ability to resign by giving notice not less than thirty days prior to the date the resignation was to take effect. The Plan Administrator was to be terminated following the end of the wind down.

Section 6.3: The GUC Trust

The GUC Trust was the trust established for the benefit of the general unsecured creditors in accordance with the terms of the Plan.³⁹⁶ The GUC Trustee was the person who was designated by the creditor's committee and The Limited as the trustee for the GUC Trust Agreement. On the Effective Date, The Limited and the GUC Trustee were to execute the GUC Trust Agreement, discussed *infra*, and were to take all necessary steps to establish the GUC Trust in accordance with the Plan.³⁹⁷ The Limited was to transfer all rights, title, and interest in and to all of the GUC Trust Assets to the GUC Trust free and clear of all claims, liens, and encumbrances. The GUC Trust Assets included the GUC Initial Fund, all rights of setoff and recoupment and other defenses that The Limited and its estates may have had with respect to any General Unsecured Claims, and any cash or other assets held by the Plan Administrator following payment of the other Classes of claims.³⁹⁸

The GUC Trust Agreement provided for payment of the GUC Trust expenses, payment of other reasonable expenses of the GUC Trust, the liquidation of the GUC Trust Assets, any distributions under the Plan, and the abandonment of any GUC Trust Assets that, in the GUC Plan Trustee's judgment, could not be sold or had inconsequential value to the GUC Trust.³⁹⁹ Any expenses that were incurred were to be paid solely from the GUC Trust Assets. The GUC Trust Agreement also provided for the employment of other qualified individuals to assist in carrying out the GUC Trustee's duties.⁴⁰⁰ The GUC Trustee was charged with carrying out the

³⁹⁴ *Id.* at 24–25.

³⁹⁵ *Id.* at 26.

³⁹⁶ *Id.* at 10.

³⁹⁷ *Id.* at 27.

³⁹⁸ *Id.* at 11.

³⁹⁹ *Id.* at 28.

⁴⁰⁰ *Id.* at 29.

provisions of the GUC Trust Agreement. Neither the GUC Trustee nor any of its affiliates were to incur any responsibility or liability when following the GUC Trust Agreement, with limited exceptions for willful misconduct and gross negligence.

The GUC Trust was required to indemnify the GUC Trustee for any loss, liability, damage, or expense incurred in carrying out the duties under the GUC Plan Trust Agreement absent any willful misconduct.⁴⁰¹ Further, the GUC Trust was required to indemnify the GUC Trustee with respect to the implementation or administration of the Plan if the GUC Trustee acted in good faith and in a manner reasonably believed to be in the best interest of the GUC Trust.

Additionally, the GUC Trustee was authorized and tasked with several other responsibilities. The GUC Trustee was authorized to obtain any necessary insurance coverage at the GUC Trust's expense for itself and any of its agents.⁴⁰² The GUC Trustee was tasked as well with filing all tax returns for the GUC Trust.⁴⁰³ The GUC Trustee was permitted to make distributions to holders of Allowed Class 7 General Unsecured Claims at any time following the Effective Date provided that the distributions were consistent with the terms of the Plan, GUC Trust Agreement, and any other applicable law. Lastly, the GUC Trustee and the GUC Trust were to be dissolved following: (a) the GUC Plan Trustee's determination that the GUC Trust would not gain any other proceeds, (b) all objections were fully dissolved, and (c) all distributions required to have been made by the GUC Trustee were made. In no event, however, was the GUC Trust to be dissolved later than five years from the Effective Date except if the court determined that an extension was necessary to facilitate the completion of the liquidation of the GUC Trust Assets.⁴⁰⁴

If there was any inconsistency between the Plan and the GUC Trust Agreement, the Plan controlled.

Section 6.4: Transfer Taxes

Any transfer of any assets was to constitute a "transfer under a plan" within the scope of § 1146(c) of the Bankruptcy Code and was not to be subject to any transfer taxes.⁴⁰⁵ § 1146(c)

⁴⁰¹ *Id.* at 31.

⁴⁰² *Id.*

⁴⁰³ *Id.* at 32.

⁴⁰⁴ *Id.* at 33.

⁴⁰⁵ The actual Code section is 1146(a). It was written as 1146(c) in the Plan, however this is incorrect as (c) was removed in 2005.

provides that the transfer of property under a plan confirmed under chapter 11 may not be taxed under any law imposing a stamp tax or similar tax.⁴⁰⁶

The scope of the § 1146(a) tax exemption has been the subject of controversy.⁴⁰⁷ The most prevalent area of debate looks at whether only transfers made under a chapter 11 plan are exempt or whether other sales at other points during a case, such as a § 363(a) sale, are also exempt.⁴⁰⁸ Circuits were split until the Supreme Court handed down a ruling in *State of Florida Dept. of Rev. v. Piccadilly Cafeterias, Inc.*, and held that § 1146(a) applied only to those transfers made pursuant to a chapter 11 plan.⁴⁰⁹ The effect of this may be that debtors will hold off on selling a majority of their assets until a plan is confirmed, or, alternatively, attempt to have their chapter 11 plan confirmed earlier than originally anticipated.⁴¹⁰

Section 6.5: Effective Date

The GUC Trustee was to have the rights and powers given to it under section 6.3 of the Plan on the Effective Date.⁴¹¹

Section 6.6: Records

The GUC Trustee was to receive copies of or access to all documents and business records of The Limited that were necessary for the disposition of the GUC Trust Assets and any objections to General Unsecured Claims.

Article VII: Unexpired Leases and Executory Contracts

On the Effective Date, all of the pre-petition date executory contracts, employment agreements, and unexpired leases were to be deemed automatically rejected.⁴¹² The Plan further provided that with respect to executory contracts and unexpired leases under the court's orders, any of the monetary amounts "by which each executory contract and unexpired lease to be assumed may be in default" were to be satisfied, pursuant to § 365(b)(1) of the Bankruptcy Code,

⁴⁰⁶ 11 U.S.C. § 1146 <https://perma.cc/6VXH-46A9>.

⁴⁰⁷ *Supreme Court "Bright Line" Ruling on Scope of Chapter 11 Transfer Tax Exemption Bad News for Pre-Confirmation Asset Sales in Bankruptcy*, JONES DAY, <https://www.jonesday.com/Supreme-Court-Bright-Line-Ruling-on-Scope-of-Chapter-11-Transfer-Tax-Exemption-Bad-News-for-Pre-Confirmation-Asset-Sales-in-Bankruptcy-08-01-2008/>. <https://perma.cc/2HN8-V7LG>

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.*

⁴¹¹ Original Plan of Liquidation, *supra* note 349, [524.pdf](#) at 33.

⁴¹² *Id.* at 34.

by cure.⁴¹³ If there was a dispute regarding (a) the nature of the amount of any cure; (b) the ability of any assignee to provide “adequate assurance of future performance” pursuant to § 365 under the executory contract or unexpired lease to be assumed, or (c) any other matter pertaining to assumption, cure was to occur following the Final Order of the court.⁴¹⁴

If The Limited was to reject any executory contracts or unexpired leases, any claim for rejection damages would be barred unless it was filed within thirty days following the entry of an order allowing The Limited to reject an executory contract or lease. Any objections that were made resulting from the rejected executory contracts or unexpired leases were to be filed by the GUC Trustee with the court. Any of the rejection claims that became Allowed Claims were to be treated as an Allowed Class 5 General Unsecured Claim.

Article VIII: Provisions Governing Distributions

Section 8.1: Time of Distributions

Any distributions that were to be made pursuant to the Plan were to have been made on the later of (a) the Effective Date, (b) the date a claim becomes an Allowed Claim, or (c) the date that cash was available for distribution to a particular Class in accordance with the Plan.⁴¹⁵ The Plan Administrator was given the authority to hold back a sufficient amount of cash in order to satisfy incurred or anticipated Plan Administration expenses incurred by the Plan Administrator. The Plan Administrator was entitled to make additional distributions after the initial distributions were made. Further, the GUC Trustee was also given the authority to hold back a sufficient amount of cash in order to satisfy incurred and anticipated GUC Trust Expenses. The GUC Trustee was also allowed to make additional distributions at its own discretion.

Section 8.2: Interests on Claims

No claimholder was to be entitled to any interest on claims following the post-Petition Date. Additionally, interest was not to accrue or be paid on any disputed claim during the period from the Petition Date to the date that a final distribution was made after the disputed claim at issue became an Allowed Claim.

⁴¹³ § 365(b) provides “if there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless . . . the trustee cures, or provides adequate assurance that the trustee will promptly cure . . . compensates, or provides adequate assurance that the trustee will promptly compensate . . . and provides adequate assurance of future performance under such contract or lease.” <https://perma.cc/KQ88-RCBN>

⁴¹⁴ Original Plan of Liquidation, *supra* note 349, [524.pdf](#) at 34.

⁴¹⁵ *Id.* at 35.

Section 8.3: Claims Administration Responsibility

The Plan Administrator was given the sole responsibility for “administering, disputing, objecting to, compromising or otherwise resolving issues related to distributions to holders of all claims.”⁴¹⁶ The only exception to this was that the GUC Trustee had the sole responsibility for the General Unsecured Claims.

Section 8.4: Tax Identification Forms from Holders of Claims

The Plan Administrator was given the authority to take any and all actions that were necessary to comply with any requirements imposed by any taxing authority.⁴¹⁷ Each claimholder of an Allowed Claim that received a distribution was to have the sole responsibility for the satisfaction and payment of any tax obligations as a result of the distribution. No distribution was to be made to the holder of Allowed Claim until the holder made arrangements, approved by the Plan Administrator, for the payment and satisfaction of the tax obligations in connection with the distribution.

The GUC Trustee was given the authority to require any holder of a General Unsecured Claim to provide current tax forms as a condition of receiving distributions under the Plan and GUC Trust Agreement by mailing each of the holders such a request.⁴¹⁸ Any of the holders who failed to return the completed forms within sixty days following the request were to be deemed to have forfeited the rights to any distributions under the Plan. Any forfeited distribution was to revert back to the GUC Trust for all purposes, including distributions to other holders of Allowed General Unsecured Claims.

Section 8.5: Withholder, Payment and Reporting Requirements Regarding Distributions

This section partly restated what was mentioned above in that it gave the Plan Administrator and the GUC Trustee authority to take any and all actions that were necessary to comply with any legal reporting requirements including requiring any claimholder to provide completed W-9 Forms. Further, this section reiterated that each claimholder of an Allowed Claim that was to receive a distribution was to have sole and exclusive responsibility for the satisfaction and payment of all tax obligations related to such distribution and that no distributions were to be made until each holder made arrangements for the payment and satisfaction of any tax obligations.⁴¹⁹

⁴¹⁶ *Id.*

⁴¹⁷ *Id.* at 35–36.

⁴¹⁸ *Id.* at 36.

⁴¹⁹ *Id.* at 37.

Section 8.6: Distribution to General Unsecured Creditors

The GUC Trustee was to make distributions to Allowed Class 7 General Unsecured Claims, following the satisfaction of the Allowed Administrative Claims, Allowed Priority Tax Claims, and Allowed Claims in Class 1, Class 2, Class 3, Class 4, Class 5, and Class 6 as required by the Plan.⁴²⁰

Section 8.7: Procedures for Treating and Resolving Disputed Claims. No Distributions Pending Allowance.

With limited exceptions, no payments or distributions were to be made with respect to all or any portion of a disputed claim unless all objections to the disputed had been resolved or such disputed claim had become an Allowed Claim. All objections to the dispute claims, other than disputed General Unsecured Claims were to be filed by the Plan Administrator on or before the Claim Objection Deadline.⁴²¹ All objections to disputed General Unsecured Claims had to be filed by the GUC Trustee on or before the Claim Objection Deadline.

The Plan Administrator was to withhold the Distribution Reserve from the property to be distributed under the Plan to claimholders other than holders of General Unsecured Claims.⁴²² The Plan Administrator was allowed to request estimation for any disputed claim that was unliquidated, and the Plan Administrator could withhold the Distribution Reserve based upon the estimated amount of each claim determined by the court. If the Plan Administrator did not request an estimation, the GUC Trustee was to withhold the Distribution Reserve “based upon the appropriate pro rata percentage distribution of the amount of such claim.”⁴²³ The GUC Trustee was given the same authority as the Plan Administrator.

Any payments that were made from the Distribution Reserve on account of a disputed claim, were to be made according to the provisions of the Plan that govern the Class in which the claim is classified. As soon as possible following the entry of a final order by the court allowing all or part of such claim, the Plan Administrator or GUC Trustee was to distribute to the holders of such claim any cash allocated to such claim in the Distribution Reserve that would have been distributed on previous distribution dates if the claims have been Allowed Claims.⁴²⁴ Any

⁴²⁰ *Id.*

⁴²¹ The Claim Objection Deadline was “the date that is the first business day that is at least 180 calendar days after the Effective Date.”

⁴²² Original Plan of Liquidation, *supra* note 349, [524.pdf](#) at 37. The Distribution Reserve was “cash from the GUC Trust in an amount equal to the distribution or distributions under applicable classes of claims that shall be made on account of disputed claims when allowed, which cash will be held by the GUC Trustee pending allowance of disputed claims, and then distributed on Account of Allowed Claims. The Distribution Reserve shall be funded from the GUC Trust Assets.” *Id.* at 9.

⁴²³ *Id.* at 37.

⁴²⁴ *Id.* at 38.

distribution that was made under this section was to be made as if such claim had been an Allowed Claim on the dates distributions were previously made to the holders of Allowed Claims.

Section 8.8: Delivery of Distributions

Distributions to holders of Allowed Claims, other than Professional Fee Claims, were to be delivered by either the Plan Administrator or GUC Trustee to the claimholders address or any agent of a claimholder.

Section 8.9: Uncashed Checks

Any cash payments that were made in the form of checks were to be null and void if not cashed within sixty days after issuance.⁴²⁵ Any distributions that were voided should have been treated as “unclaimed or undeliverable” distributions. Any requests for reissuance of checks were required to be made in writing to the Plan Administrator or GUC Trustee within sixty days after the issuance.

Section 8.10: Unclaimed or Undeliverable Distributions

If the distribution to any claimholder, not including Professional Fee Claims, was returned as undeliverable, then no further distributions were to be made to the claimholder unless the Plan Administrator or GUC Trustee was notified of the such claimholders current address, and the claimholder asserted a claim for an undeliverable instrument within sixty days after the distribution was returned as undeliverable.⁴²⁶ If the claimholder did not meet these conditions, then the undeliverable distribution was to be treated as unclaimed property under § 347(b) of the Bankruptcy Code and the title to such property was to revert to or remain in the GUC Trust or the debtors’ estates.⁴²⁷ If the claimholder provided the Plan Administrator or GUC Trustee the necessary information, any missed distributions were required to be made to the claimholder as soon as possible.

Section 8.11: Minimum Distribution

Any distributions of cash that were less than \$50.00 were not required to be made.⁴²⁸

⁴²⁵ *Id.*

⁴²⁶ *Id.*

⁴²⁷ § 347(b) of the Bankruptcy Code states “Any security, money, or other property remaining unclaimed at the expiration of the time allowed in a case under chapter 9, 11, or 12 of this title for the presentation of a security or the performance of any other act as a condition to participation in the distribution under any plan confirmed under section 943(b), 1129, 1173, or 1225 of this title, as the case may be, becomes the property of the debtor or of the entity acquiring the assets of the debtor under the plan, as the case may be.” <https://perma.cc/Y5VA-AUEC>.

⁴²⁸ Original Plan of Liquidation, *supra* note 349, [524.pdf](#) at 38.

Section 8.12: Manner of Payment Under this Plan

Any cash distributions were to be made by checks drawn on domestic banks selected by the Plan Administrator or GUC Trustee or by wire transfer from a domestic bank selected by the Plan Administrator or GUC Trustee.⁴²⁹

Section 8.13: Post-Final Distribution Assets

Any assets that were received by the GUC Trustee after the final distributions were made were to be distributed pro rata to the holders of Allowed Class 7 General Unsecured Claims unless the GUC Trustee determined that the assets were insufficient to make any further distributions.

Article IX: Settlement, Release, Injunction, and Related Provisions

Section 9.1: Compromise and Settlement of Claims, Interests and Controversies

The Plan was to constitute (a) a good faith compromise of all claims, interests, and controversies relating to the contractual legal and subordination rights that a holder of a claim may have had with respect to any Allowed Claim and (b) a good faith compromise of all claims and causes of action The Limited, the OCC, or any other person that could bring such cause of action on their behalf against any parties who were no longer involved in the proceedings.⁴³⁰ It is important to note that the OCC was an official committee of unsecured creditors appointed by the Office of the United States Trustee.⁴³¹ After the Effective Date, the Plan Administrator had the power to compromise and settle claims against The Limited, not including General Unsecured Claims, as well as causes of action against any other entities. The GUC Trustee was given the authority to settle General Unsecured Claims against the debtors and any actions arising out the GUC Trust against other entities.

Section 9.2: Release of Liens

On the Effective Date, and, in the case of a secured claim, upon satisfaction in full portion of the secured claim that was an Allowed Claim as of the Effective Date, all mortgages, deeds of trust, liens, pledges, or security interests against any property of the estates were to be fully released and discharged. All the right, title, and interest of any holder of such mortgages, deeds of trust, liens, pledges, or other security interests was to revert to the appropriate estate.

⁴²⁹ *Id.* at 39.

⁴³⁰ *Id.*

⁴³¹ Original Disclosure Statement, *supra* note 350, [525.pdf](#) at 15. The Creditors' Committee consisted of five of the debtor's largest unsecured creditors: LF Centennial PTE Ltd.; LLS Freight/aka Mast Logistics Services, Inc.; Tru Frangrance & Beauty LLC; Simon Property Group, Inc.; and GGP Limited Partnership.

Section 9.3: Release by the Debtors

On the Effective Date, each released party was to be deemed fully released, acquitted, and discharged by each and all the debtors, the debtors' estates, and the Liquidating Debtors from all claims and obligations.⁴³² A released party was defined as:

Each of (a) the debtors; (b) the sponsor; (c) the Creditors' committee and its members in their capacity as such; and (d) with respect to each of the foregoing entities in clauses (a) through (c), each and all of such entities' direct and indirect current and former: equity holders, affiliates, predecessors, participants, successors and assigns, parents, subsidiaries, partners, managed accounts, or funds, management companies, fund advisors, investors, beneficial owners, managing members, directors, managers, officers, principals, advisory board members, controlling persons, employees, agents, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives and other professionals, advisors, and representatives, and each and all of their respective heirs, successors, and legal representatives—provided that any holder of a claim or interest that opts out of the releases shall not be a “released party.”⁴³³

The only claims for which there was no release were those that arose from actual fraud, willful misconduct, or gross negligence.

Section 9.4: Releases by Holders

On the Effective Date, each of the releasing parties were to be deemed to have absolutely acquitted and discharged each and all the released parties from any and all claims and obligations that prior, to the Effective Date. A releasing party is defined as:

Each of (a) the debtors, (b) the Prepetition Revolving Secured Lenders, (c) the Prepetition Term Secured Lenders, (d) the Prepetition Revolving Secured Agent, (e) the Prepetition Term Secured Agent, (f) the DIP Lenders, (g) the DIP Agent, (h) the holders of interests, (i) the Sponsors, (j) all holders of claims that vote to accept or are deemed to accept the Plan; (k) all holders of claims or interests that abstain from voting on the Plan and who do not affirmatively opt out of the releases provided by the Plan by checking the box on the applicable ballot indicating that they opt not

⁴³² Original Plan of Liquidation, *supra* note 349, [524.pdf](#) at 39–40.

⁴³³ *Id.* at 15.

to grant the releases provided in the Plan; and (l) all holders of claims or interests that vote to reject the Plan and who do not affirmatively opt out of the releases provided by the Plan by checking the box on the applicable indicating that they opt not to grant the releases provided in the Plan; and (m) with respect to each of the foregoing entities in clauses (a) through (l), each and all of such entities' direct and indirect current and former: equity holders, affiliates, predecessors, participants, successors and assigns, parents, subsidiaries, partners, managed accounts for funds, management companies, fund advisors, investors, beneficial owners, managing members, directors, managers, officers, principals, etc. . . .⁴³⁴

The only claims not included were those that arose out of actual fraud, willful misconduct or gross negligence.⁴³⁵

Section 9.5: Liabilities to, and Rights of, Governmental Units

Nothing in the Plan was to affect the rights of the government to assert any claim or enforce liability against a particular party to the chapter 11 proceedings.⁴³⁶ The discharge and injunction provisions in the Plan and confirmation order were not intended to bar the government from pursuing any police or regulatory action after the Effective Date.

Section 9.6: Exculpation

None of the exculpated parties were to be obligated or have liability from any claim arising out of the chapter 11 case and the implementation of the Plan except in the case of fraud, gross negligence, or willful misconduct.⁴³⁷ An exculpated party was defined as:

Each of (a) the debtors and (b) the Creditors' committee and its members in their capacity as such and with respect to clauses (a) through (b) such entities' predecessors, participants, successors and assigns, subsidiaries, beneficial owners, managed accounts or funds, current and former officers, directors, managers, principals, shareholders, direct and indirect equity holders, members, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants,

⁴³⁴ *Id.* at 15–16.

⁴³⁵ *Id.* at 41.

⁴³⁶ *Id.*

⁴³⁷ *Id.* at 41–42.

representatives, management companies, fund advisors, and other Professionals.

The Limited was viewed to have acted in good faith and compliance with applicable laws and provisions of the Bankruptcy Code in soliciting votes and transfers of its assets to the GUC Trust pursuant to the Plan.

Section 9.7: Injunction

After the Effective Date, all entities were to be permanently enjoined from commencing or continuing any cause of action that was to be released pursuant to the Plan.⁴³⁸ Any entity that had claims or interests that were to be released pursuant to Article 9 of the Plan were enjoined from: (a) commencing or continuing in any manner any action or other proceeding in connection with such claims or interest; (b) enforcing or recovering any judgment, award, decree or order against such entities on account of or in connection with such claims or interests; (c) creating any encumbrance of any kind against any entity or the property of any entity in connection with such claims or interests; (d) asserting a right of setoff, subrogation, or recoupment of any kind against any obligation due from an entity on account of or in connection with any such claim or interest unless the holder filed a motion before the Effective Date requesting the right to perform such setoff; and (5) commencing or continuing in any manner any action or other proceeding of any kind in connection with any such claims or interests released or settled pursuant to the Plan.

*Section 9.8–Section 9.11*⁴³⁹

These provisions provided that The Limited and holders of claims or interests were to be precluded from commencing any action against the released parties and the exculpated parties in any manner. Further, all entities were to be precluded from asserting against The Limited any claim or interest that arose before the Effective Date. Any rights that were afforded in the Plan were in exchange for complete satisfaction of claims and interests of any nature against The Limited and any of its assets, property, or estate assets.⁴⁴⁰ Furthermore, any liability resulting from existing claims, including the kind specified under § 502(g) of the Bankruptcy Code, was to be fully released and cancelled.⁴⁴¹ Lastly, any new claim or amended complaint was not to be

⁴³⁸ *Id.* at 42.

⁴³⁹ These sections had no headings and thus were compiled together.

⁴⁴⁰ Original Plan of Liquidation, *supra* note 349, [524.pdf](#) at 43.

⁴⁴¹ § 502(g) identifies these claims as: (1) A claim arising from the rejection, under section 365 of this title or under a plan under chapter 9, 11, 12, or 13 of this title, of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition. (2) A claim for damages calculated in accordance with section 562 shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition <https://perma.cc/2F4T-L4NF>.

filed or amended without the prior authorization of the court or the consent of the GUC Trustee. If there was no authorization, any new or amended claim was to be disallowed without order of the court.

Section 9.12: Term of Injunctions or Stays

The Plan provided that unless stated otherwise, any injunctions or stays in effect in the chapter 11 case pursuant to § 105 or § 362 of the Bankruptcy Code or any order of the court was to remain in full force and effect until the Effective Date.⁴⁴² Any injunction or stay in the Plan or Confirmation Order was to remain in full force and effect in accordance with the terms of the Plan.

Section 9.13: Compromises and Settlements

Under the Plan, The Limited reserved the right to compromise and settle up to and including the Effective Date, claims against them and claims that they may have against any other persons.⁴⁴³ Following the Effective Date, this right was to pass to the GUC Trustee.

Section 9.14: Cancellation of Agreements

Any document that created indebtedness, other than the rights to receive a distribution, was deemed to be automatically cancelled by the Plan.

Section 9.15: Objection to Claims

A failure by The Limited, the Liquidating Debtors, the Plan Administrator, or the GUC Trustee to object to any claim or interest for the purpose of voting was not to be deemed a waiver of any such entities' right to object to the claim or interest in whole or in part for any other purpose.⁴⁴⁴

Section 9.16: Setoff

In no event did the Plan provide any claimholder to be entitled to setoff any claim against any claim, right, or cause of action of The Limited, unless the claimholder preserved its right to set off by (i) including in a timely-filed proof of claim that it intends to preserve any right of setoff pursuant to § 553 of the Bankruptcy Code or (ii) filing a motion for authority to effect such setoff on or before the confirmation date.⁴⁴⁵

⁴⁴² Original Plan of Liquidation, *supra* note 349, [524.pdf](#) at 43; See 11 U.S.C. §§ 105 & 362. <https://perma.cc/2V58-HJJX> & <https://perma.cc/R9E6-9RLF>.

⁴⁴³ Original Plan of Liquidation, *supra* note 349, [524.pdf](#) at 44.

⁴⁴⁴ *Id.*

⁴⁴⁵ *Id.*

Article X: Conditions Precedent

Section 10.1: Conditions to Confirmation

Certain conditions were required before the confirmation of the Plan could occur. The conditions included: (a) the Plan and confirmation order were to be in form and substance reasonably acceptable to the debtors; (b) filing of the Plan Supplement;⁴⁴⁶ (c) the Plan Administrator was to have been selected and indicated his or her agreement to serve in accordance with the Plan; and (d) the GUC Trustee was to be selected and was required to agree to serve under the terms of the Plan and the GUC Trust Agreement.⁴⁴⁷

Section 10.2: Conditions to Effective Date

In order for the Effective Date to occur according to the Plan, the Plan required the court to enter a confirmation order and such order was required to become a final order. Next, there must not have been any stay in effect with the confirmation order; and the Plan required that the GUC Trust Agreement be fully executed.⁴⁴⁸

Section 10.3: Waiver of Conditions to Confirmation and Effective Date

The Plan provided that The Limited could waive the conditions set forth in sections 10.1 and 10.2 without a hearing. Any failure to waive the conditions above could have been asserted by The Limited regardless of the circumstances giving rise to the failure to such condition to be satisfied.

Article XI: Retention of Jurisdiction

The court was to have exclusive jurisdiction of all matters that arose out of the chapter 11 proceedings and the Plan. These included: modifications to the Plan, impending motions for the assumption and assignment of executory contracts, and the entrance of a Final Decree closing the chapter 11 cases.⁴⁴⁹

⁴⁴⁶ The Plan Supplement was defined as the “compilation of documents and forms of documents, schedules and exhibits to the Plan to be filed no later than seven days before the Confirmation Hearing, in consultation with the Creditors’ Committee, on notice to parties in interest, and additional documents filed before the Effective Date as supplements or amendments to the Plan Supplement.”

⁴⁴⁷ Original Plan of Liquidation, *supra* note 349, [524.pdf](#) at 44–45.

⁴⁴⁸ *Id.* at 45.

⁴⁴⁹ *Id.* at 45–46.

Article XII: Acceptance or Rejection of the Plan; Effect of Rejection by One or More Impaired Classes of Claims or Interests

The Plan provided the terms and methods in which voting would take place.⁴⁵⁰ The claimholders in each Impaired Class of Claims were entitled to vote as a class to accept or reject the Plan. An Impaired Class of Claims was deemed to have accepted the Plan if the Plan was “accepted by the holders of at least two-thirds in dollar amount and more than one-half in number of Allowed Claims of such Class that have timely and properly voted to accept or reject the Plan.” If less than all of the Classes entitled to vote accepted the Plan, then the Plan required the debtors to seek confirmation of the Plan under § 1129(b) of the Bankruptcy Code.⁴⁵¹ If the confirmation requirements of § 1129 of the Bankruptcy Code were not satisfied, then the Plan would not be confirmed until such requirements were met.⁴⁵²

Article XIII: Miscellaneous Provisions

Section 13.1: Binding Effect

The Plan was to be binding upon and for the benefit of the debtors, the Plan Administrator, the GUC Trustee, all present and former claimholders, all present and former interest holders, and any other parties in interest.⁴⁵³

Section 13.2: Modification and Amendments

The Plan gave The Limited the authority to alter, amend, or modify the Plan at any time prior to the confirmation hearing. Following the confirmation hearing, The Limited was given the authority to institute proceedings in the court to remedy any defect or omission in the Plan as long as the proceedings did not materially alter the treatment of claimholders under the Plan.⁴⁵⁴

Section 13.3: Creditors’ Committee

The Creditors’ Committee was to continue in existence until the Effective Date to exercise the powers pursuant to § 1103 of the Bankruptcy Code. These powers include: consulting with the trustee or debtor in possession concerning the administration of the case; investigating the financial condition of the debtor; participating in the formulation of a plan; requesting appointment of a trustee or examiner; and performing such other services as are in the

⁴⁵⁰ *Id.* at 47.

⁴⁵¹ See 11 U.S.C. § 1129(b) <https://perma.cc/D7DD-BR2Q>.

⁴⁵² Original Plan of Liquidation, *supra* note 349, [524.pdf](#) at 47.

⁴⁵³ *Id.*

⁴⁵⁴ *Id.* at 48.

interest of those represented.⁴⁵⁵ Following the Effective Date, the Creditors' Committee was to exist for the sole purposes of (a) matters relating to any appeals or other challenges to the confirmation order; (b) pursuing the Creditors' Committee's Professional Fee Claims and reviewing and being heard in connection with all Professional Fee Claims; and (c) appearing before and being heard by the court and other courts of competent jurisdiction.⁴⁵⁶ Following completion of the duties, the Creditors' Committee was to dissolve and all members were to be released of their duties.

Section 13.4: Preserved Claims

The Plan provided that any preserved claims were preserved for prosecution of and enforcement by the Plan Administrator. The Plan Administrator was to have no obligation to pursue any preserved claims.

Section 13.5: Substantial Consummation

The Plan was to be deemed substantially consummated on the first date distributions were made in accordance with the terms of the Plan.

Section 13.6: Revocation, Withdrawal or Non-Consummation Right to Revoke or Withdraw

The Plan allowed The Limited to reserve the right to revoke or withdraw the Plan at any time prior to the Effective Date.⁴⁵⁷

Section 13.7: Severability of Plan Provisions

The Plan gave the court the power to alter any invalid term to make it valid and enforceable if the term did not involve the treatment of claims or interests or the conditions to the Effective Date.

Section 13.8: U.S. Trustee's Fees

All fees that were due under 28 U.S.C. § 1930 were to be paid on the Effective Date.

Section 13.9: Notices

The Plan provided that notice of all post-Effective Date matters for which notice was required to be given would have been deemed sufficient if served upon the U.S. Trustee's Office, counsel to The Limited, the Plan Administrator, counsel to the Plan Administrator, and counsel to the GUC Trustee.

⁴⁵⁵ 11 U.S.C. § 1103 <https://perma.cc/6Y2Y-XZ8P>.

⁴⁵⁶ Original Plan of Liquidation, *supra* note 349, [524.pdf](#) at 48.

⁴⁵⁷ *Id.* at 49.

Section 13.10: Governing Law

The laws of the state of Delaware were to govern the construction and implementation of the Plan.⁴⁵⁸

Section 13.11: Waiver and Estoppel

Under the Plan, each claimholder was to be deemed to have waived any right to assert that its claim or interest should be allowed in a certain amount if such agreement was not disclosed in the Plan, Disclosure Statement, or other papers filed with the court.

Important Disclosure Statement Note

Acceptance of the Plan required not only the requisite number of creditors and interest holders of any class, but also required the court's determination that the Plan provided each member of each Impaired Class of Claims and Interests a recovery that had a value at least equal to the value of the distribution that each claimholder would receive if the debtors were liquidated under chapter 7 on the Effective Date.⁴⁵⁹ The Limited believed that the Plan satisfied the standard because the Plan provided for an orderly liquidation of the assets. It was the belief of the debtors that the unsecured creditors would not receive a distribution in a chapter 7 proceeding either. The debtors provided no guarantee that sales of the remaining assets would generate additional proceeds for distribution to the holders of Allowed General Unsecured Claims.

Modified Contents of the Plan

Under § 1125(b) of the Bankruptcy Code, a vote to accept or reject the Plan cannot be solicited from a claimholder until the disclosure statement has been approved by the court.⁴⁶⁰ On August 16, 2017, in addition to filing the Plan and the Disclosure Statement with the court, The Limited also filed a motion to approve the Disclosure Statement and the Terms of the Plan.⁴⁶¹ The hearing was held on September 27, 2017. Following the hearing and comments by the Creditors' Committee, The Limited filed a Modified Joint Chapter 11 Plan of Liquidation (the

⁴⁵⁸ *Id.* at 50.

⁴⁵⁹ Original Disclosure Statement, *supra* note 350, [525.pdf](#) at 35.

⁴⁶⁰ Original Plan of Liquidation, *supra* note 349, [524.pdf](#) at 2; *see* 11 U.S.C. 1125(b).

⁴⁶¹ Motion of the Debtors for an Order (I) Approving the Disclosure Statement; (II) Fixing the Voting Record Date; (III) Approving the Notice and Objection Procedures in Respect of Confirmation of the Plan; (IV) Approving Solicitation Packages and Procedures for Distribution Thereof; (V) Approving the Forms of Ballots and Establishment of Procedures for Voting on the Plan; (VI) Approving the Forms of Notices to Non-Voting Classes Under the Plan; (VII) Fixing the Voting Deadline to Accept or Reject the Plan; and (VIII) Approving Procedures for Vote Tabulations in Connection Therewith [526.pdf](#) at 1, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

“Modified Plan”) on November 2, 2017.⁴⁶² On the same date, The Limited filed a Disclosure Statement with Respect to the Modified Joint Chapter 11 Plan of Liquidation (the “Modified Disclosure Statement”).⁴⁶³

Article I: Definitions

Under Article 1: Definitions, the definitions of Allowed Claims, Impaired Claims and Effective Date remained the same. A universal change to the Modified Plan was the removal of all definitions involving the General Unsecured Claims Trust, aside from the actual General Unsecured Claims definition, and the Plan Administrator. Plan Trust was substituted in the place of these definitions throughout the Plan. The Plan Trust was “the trust established for the benefit of the Plan Trust Beneficiaries on the Effective Date in accordance with the terms of the Plan and the Plan Trust Agreement which shall be a grantor, liquidating trust.”⁴⁶⁴ Aside from the removals discussed above, the Modified Plan retained mostly all of the remaining definitions of the Plan with few exceptions.

The following Articles and Sections listed are the only ones that were changed in the Modified Plan. Any Article or Section not listed was not changed with the exception of the changed wording previously mentioned.

Article IV: Provisions for Treatment of Unclassified Claims, Administrative Claims and Priority Tax Claims

Section 4.2: Administrative Claims – Professional Fee Claims

Here, the application to pay the Professional Fee Claims was to be served on counsel to The Limited, counsel to Creditors’ Committee, counsel to the Plan Trustee rather than the Plan Administrator, and counsel to the U.S. Trustee. Instead of payment of the Plan Administrator paying the Professional Fee Claims, all of the Professional Fee Claims were to be paid from the Professional Fee Claim Escrow.⁴⁶⁵ The Professional Fee Claim Escrow was “an escrow account funding by the debtors on the Effective Date and maintained by counsel to [The Limited] to provide sufficient funds to pay in full all unpaid Allowed Professional Fee Claims.”⁴⁶⁶

⁴⁶² Chapter 11 (Modified Joint) Plan of Liquidation Filed [604.pdf](#) at 1, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Modified Plan of Liquidation].

⁴⁶³ *Disclosure Statement With Respect to Modified Joint Chapter 11 Plan of Liquidation of LSC Wind Down, LLC f/k/a Limited Stores Company, LLC and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [606.pdf](#) at 1, *Disclosure Statement With Respect to Modified Joint Chapter 11 Plan of Liquidation of LSC Wind Down, LLC f/k/a Limited Stores Company, LLC and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [hereinafter Modified Disclosure Statement].

⁴⁶⁴ *Id.* at 11.

⁴⁶⁵ *Id.* at 18.

⁴⁶⁶ *Id.* at 14.

Section 4.3–Section 4.7

These Sections remained mostly the same. The only difference was that payment was to be made by the Plan Trustee from the Available Cash.⁴⁶⁷ Available Cash was all the cash held by The Limited on the Effective Date as well as all the cash realized after the Effective Date aside from that used to pay all Allowed Administrative Claims.⁴⁶⁸

The Modified Disclosure Statement, however, provided the amounts of each Administrative Claim and the amount that would likely have been paid as of the Effective Date.⁴⁶⁹ The following table illustrates the amounts of each claim filed against the debtors and the estimated amount that would be allowed and unpaid as of the Effective Date.

Claim Type	Estimated Amount of Unpaid Claim on Effective Date	Projected Recovery Under the Plan
DIP Facility	\$0.00	\$0.00
Substantial Contribution Claims	\$0.00	\$0.00
503(b)(9) Claims	\$0.00	\$0.00
Tax Claims	\$0.00	\$0.00
Priority Tax Claims	\$1,306,518.00	Full Amount

For the 503(b)(9) Claims and the Tax Claims there were values that were unpaid before the Effective Date of \$22,681.13 and \$1,202,240.47, respectively.

Article V: Provisions for Treatment of Claims and Interests

Class 3: Liberty Mutual Secured Claims

The only change in this Section was that the sum was to be agreed upon by The Limited, the Plan Trustee, and Liberty Mutual. The Modified Disclosure Statement identified that there

⁴⁶⁷ *Id.* at 19–20.

⁴⁶⁸ *Id.* at 4.

⁴⁶⁹ Modified Disclosure Statement, *supra* note 463, [606.pdf](#) at 25–26.

would be approximately \$576,185.00 unpaid on the Effective Date, but a full recovery was still expected under the Modified Plan.⁴⁷⁰

Class 4: Miscellaneous Secured Claims

This Section changed the payment method and gave the Plan Trustee the discretion to make payments.⁴⁷¹ The Modified Disclosure Statement estimated that there would be no payments due on the Effective Date under this Class.⁴⁷²

Class 5: Priority WARN Claims

The Modified version of this Class provided that the holder of each Class 5 Priority WARN Claim was to receive, following the payment of Allowed Claims in Class 1, Class 2, Class 3 and Class 4 claims, its pro rata share of cash from the Available Cash in the amount of \$810,625.00, consistent with the settlement that was reached between the debtors and holders of Priority WARN Claims that was to be subject to a separate motion under Bankruptcy Rule 9019.⁴⁷³

Class 6: Priority Non-Tax Claims

Here, the only difference was that instead of payment being made from the GUC Trust Assets, payments were to be made from the Available Cash or Plan Trust Assets.⁴⁷⁴ The Modified Disclosure Statement provided that there would be approximately \$46,997.30 unpaid as of the Effective Date and a full recovery was expected under the Modified Plan.⁴⁷⁵

Class 7: General Unsecured Claims

Here, the Modified Plan provided that instead of the holders of a Class 7 claim receiving a pro rata share of GUC Trust Interests, the holders were to receive their pro rata share of Plan Trust Interests. The Plan Trust Interests were defined as the “non-transferrable, beneficial interests in the Plan Trust that entitled the holder thereof to the distributions of the Plan Trust Assets which were to be made pursuant to the Plan and the Plan Trust Agreement, which Plan Trust Interests will be non-transferrable and non-assignable except by operation of law.”⁴⁷⁶

⁴⁷⁰ Modified Disclosure Statement, *supra* note 463, [606.pdf](#) at 18.

⁴⁷¹ Modified Plan of Liquidation, *supra* note 462, [604.pdf](#) at 20.

⁴⁷² Modified Disclosure Statement, *supra* note 463, [606.pdf](#) at 18.

⁴⁷³ Modified Plan of Liquidation, *supra* note 462, [604.pdf](#) at 20.

⁴⁷⁴ *Id.* at 21.

⁴⁷⁵ Modified Disclosure Statement, *supra* note 463, [606.pdf](#) at 18.

⁴⁷⁶ Modified Plan of Liquidation, *supra* note 462, [604.pdf](#) at 12.

Additionally, this Section added on language stating the holders of Priority WARN Claims were not to be included in Class 7 General Unsecured Claims and would not receive distributions in accordance with Class 7 claims.⁴⁷⁷ There was an amount of \$153,409,153.00 unpaid as of the Effective Date and an expected recovery under the Modified Plan of less than 1%.⁴⁷⁸

Article VI: Means for Implementation of the Plan

Sections 6.1 and 6.2 were removed from the Modified Plan. Liquidating Debtors were removed completely from the Modified Plan. The Modified Plan began at the old Section 6.3, which described the provisions definition of the GUC Trust.

Section 6.1: The Plan Trust

The first major difference arose in the purposes of the Plan Trust.⁴⁷⁹ The Plan Trust was to be established for the purpose of liquidating Plan Trust Assets, winding down the affairs of The Limited, seeking approval of the settlement of the WARN Action, and, if necessary, defending the WARN Action, prosecuting third-party claims, and making distributions to Allowed Claims.

The Plan Trust Agreement was the agreement that established and delineated the terms of the Plan Trust.⁴⁸⁰ This established the same things that the GUC Trust Agreement established.⁴⁸¹ The Modified Plan provided that the Plan Trustee and the Plan Trust were to be dissolved in the same manner that the GUC Trust was to be dissolved.

Section 6.3: Third Party Claims

This Section of the Modified Plan gave the Plan Trustee the authority to pursue any third-party claim. A third party claim was a cause of action by The Limited as of the Effective Date against any person not released under a prior order of the court or under the Modified Plan.⁴⁸² Any recoveries made under the third party claims were to be added to the Plan Trust Assets and were to be distributed in accordance with the Modified Plan and Plan Trust Agreements.⁴⁸³

⁴⁷⁷ *Id.* at 21.

⁴⁷⁸ Modified Disclosure Statement, *supra* note 463, [606.pdf](#) at 27.

⁴⁷⁹ Modified Plan of Liquidation, *supra* note 462, [604.pdf](#) at 22.

⁴⁸⁰ *Id.* at 11.

⁴⁸¹ *Id.* at 21–27.

⁴⁸² *Id.* at 15.

⁴⁸³ *Id.* at 28.

Section 6.6: Substantial Consummation

This Section was in a completely new place in the Modified Plan, as it was previously located in Section 13.5. It provided that the Plan was deemed to be substantially consummated on the first date distributions were made to any of holders of Allowed Claims of any Class.

Section 6.7: Rights with Respect to Challenger Rights Order

Nothing in the Modified Plan or any other Modified Plan related documents were to alter, impair or otherwise affect the court's Challenger Rights Order (the "CRO"). The CRO was the Order Approving Stipulation (I) Resolving Committee's Challenge Rights under Final DIP Order; and (II) Releasing Funds Escrowed for the Benefit of the DIP Agent and the Pre-Petition Agent.⁴⁸⁴ The CRO was to govern if any conflict appeared with the Modified Plan.

Article X: Conditions Precedent

This Section was left relatively unchanged as well. The only changes made to the conditions required for the Plan to go into effect were the addition of the Creditors' Committee as a consultant to The Limited, the removal of the Plan Administrator section, and the substitution of the Plan Trustee for the GUC Trustee, and the substitution of the Plan Trust Agreement for the GUC Trust Agreement.⁴⁸⁵ Lastly, the Modified Plan also gave the Creditors' Committee the right to waive the conditions set forth in Sections 10.1 and 10.2

Article XII: Acceptance or Rejection of the Plan; Effect of Rejection by One or More Impaired Classes of Claims or Interests

This Article remained unchanged in the Modified Plan.⁴⁸⁶ There were, however, provisions added to the Modified Disclosure Statement, which governed the rejection of certain ballots. Ballots that were to be rejected included:

- (a) any Ballot cast for a Claim identified in the Schedules as unliquidated, contingent, or disputed for which no proof of claim was timely filed;
- (b) any Ballot cast for a Claim for which an objection or request for estimation had been filed on or before the Solicitation Date as set forth in the Disclosure Statement Approval Order;
- (c) any unsigned Ballot or Ballot that did not contain an original signature;

⁴⁸⁴ *Id.* at 6.

⁴⁸⁵ *Id.* at 38.

⁴⁸⁶ *Id.* at 40–41.

- (d) any ballot transmitted to the balloting agent by facsimile or other means not specifically approved in the Disclosure Statement Approval Order;
- (e) any ballot that was otherwise properly completed, executed and timely returned, but did not indicate a vote to accept or reject the Plan or that indicated a vote to both accept and reject the Plan.⁴⁸⁷

However, in the event a creditor cast multiple ballots for the same claim before the deadline, the last ballot that was received before the deadline was to be deemed to supersede all ballots and would be accepted.

Article XIII: Miscellaneous Provisions

Section 13.1–Section 13.3; Section 13.7; Section 13.8–Section 13.13

All the Sections listed above did not change aside from the substitution of Plan Trustee for Plan Administrator or GUC Trustee.⁴⁸⁸ Section 13.7 was changed to Substantial Consummation; Section 13.8 was changed to Revocation, Withdrawal or Non-Consummation Right to Revoke or Withdraw, Section 13.9 was changed to Severability of Plan Provisions; Section 13.10 was changed to U.S. Trustee’s Fees; Section 13.11 was changed to Notices; Section 13.12 was changed to Governing Law; and Section 13.13 was changed to Waiver and Estoppel.

Section 13.4: Third Party Claims/Causes of Action

This Section largely mirrored the Plan’s Section 13.4. Preserved claims were removed from the Modified Plan and third-party claims were put in its place. This Section provided that third party claims were available for prosecution and enforcement by the Plan Trustee.

Section 13.5: Insurance Issues

This Section was added in the Modified Plan. It provided that nothing in the Modified Disclosure Statement, the Modified Plan, the Plan Supplement, order by the court, or any other Modified Plan document altered the rights and obligations of the debtors or the debtors’ insurers under any insurance policy. The exception was that on and after the Effective Date, The Limited and the Plan Trust were to become jointly and severally liable for all The Limited’s obligations under the insurance policies regardless of whether the obligations arose before or after the Effective Date.

⁴⁸⁷ Modified Disclosure Statement, *supra* note 463, [606.pdf](#) at 8–9.

⁴⁸⁸ Modified Plan of Liquidation, *supra* note 462, [604.pdf](#) at 41–44.

Section 13.6: Comenity Action Issues

This Section was also added in the Modified Plan. It provided that nothing in the Modified Disclosure Statement, the Modified Plan, or any order of the court would have an effect on the Comenity Action. The Comenity Action was defined as the “adversary proceeding commenced against Comenity Bank, f/k/a World Financing Bank, Successor by Conversion to World Financing Network National Bank in the Bankruptcy Court bearing Adversary Proceeding No. 17-50558 (KJC) and any substitute or successor action.”⁴⁸⁹

The Limited and Comenity Bank (“Comenity”) were parties to a Private Label Credit Card Program Agreement (the “Program Agreement”).⁴⁹⁰ On March 10, 2017, The Limited moved to reject the Program Agreement, and the court granted this motion on April 10, 2017. On March 20, 2017, Comenity filed a claim against The Limited in the amount of \$27,421,894 (the “Comenity Claim”) for damages resulting from The Limited’s rejection of the Program Agreement, the return of a signing bonus paid by Comenity to The Limited, and the return of a marketing contribution paid by Comenity to The Limited.⁴⁹¹ On June 14th, 2017 The Limited filed a complaint (the “Comenity Adversary Complaint”) seeking to recover over \$2,000,000 in proceeds that it alleged Comenity retained without authority or justification.

After confirmation of the Plan, the Plan Trustee received the right to pursue the Comenity Adversary Complaint.⁴⁹² Rather than paying the costs of litigation, the Plan Trustee and Comenity agreed to settle.⁴⁹³ The parties’ settlement agreement (the “Comenity Settlement Agreement”) required Comenity to pay \$900,000 to the Plan Trust and required both parties to withdraw and release all claims against the other.⁴⁹⁴

The Trustee moved the court to approve the Comenity Settlement Agreement pursuant to Bankruptcy Rule 9019. Bankruptcy Rule 9019 authorizes a bankruptcy court to approve a

⁴⁸⁹ *Id.* at 6.

⁴⁹⁰ Plan Trustee’s Motion Pursuant to Section 105 of the Bankruptcy Code and Bankruptcy Rule 9019 for Entry of an Order Approving Settlement Agreement Between the Debtors and Comenity Bank [751.pdf](#) at 3, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Plan Trustee’s Motion to Approve the Comenity Settlement].

⁴⁹¹ Adversary Complaint by LS Wind Down, LLC against Comenity Bank [474.pdf](#) at 7, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

⁴⁹² Plan Trustee’s Motion to Approve the Comenity Settlement, *supra* note 490, [751.pdf](#) at 3.

⁴⁹³ *Id.* at 4.

⁴⁹⁴ *Id.* at 5.

settlement after notice and a hearing. The court granted the motion in full and authorized the Comenity Settlement Agreement.⁴⁹⁵

Important Note on the Modified Disclosure Statement

The Modified Disclosure Statement echoed several of the same provisions as the Original Disclosure Statement with slight changes. The debtors included provisions that stated that the projections were not 100% guarantees and that there was a probability that the expected recoveries could change. Additionally, The Limited provided a side-by-side comparison of what the chapter 11 distributions would look like versus what chapter 7 distributions would like in order to satisfy the court’s requirement that the distributions be the same to each Impaired Class of Claim or Interest in a chapter 11 proceeding as they would be in a chapter 7 proceeding. The following table was used to address this concern.⁴⁹⁶

As of December 31, 2017	Chapter 11	Chapter 7
<i>Forecasted Cash Available for Distribution</i>		
Cash & Equivalents	4,047,000	4,047,000
Sale of IL tax credit	90,000	90,000
Release of Amex reserve	90,000	90,000
Release of Discover Reserve	208,000	208,000
TOTAL CASH & RECEIPTS	4,435,000	4,435,000
<i>Forecasted Administrative Expenses</i>		
<i>Prior to Plan Effective Date</i>		
Administrative Expenses (non-professional)	158,000	158,000

⁴⁹⁵ Order Approving Settlement Agreement Between the Debtors and Comenity Bank [775.pdf](#), *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

⁴⁹⁶ Modified Disclosure Statement, *supra* note 463, [606.pdf](#) at Exhibit A.

Administrative Expenses (professional)	373,000	373,000
		..
<i>Forecasted Outstanding as of Plan Effective Date</i>		
Professional Fee Claims	1,142,000	1,142,000
Priority WARN Claims	810,625	810,625
		..
Priority Tax Claims	1,306,518	1,306,518
Priority Non-Tax Claims	46,997	46,997
CASH AVAILABLE TO UNSECURED CREDITORS	597,860	597,860
		..
Incremental Chapter 7 Fees & Costs		
Trustee Fee % (3% of all Cash Distributed)	---	133,050
		.
Attorney and Other Professional Fees	---	350,000
		..
TOTAL INCREMENTAL CHAPTER 7 FEES & COSTS	---	483,050
COMPARISON OF CHAPTER 11 VS. CHAPTER 7 AVAILABLE CASH	597,860	114,810

On November 7, 2017, the court issued an order approving the Disclosure Statement.⁴⁹⁷

⁴⁹⁷ Order (I) Approving the Disclosure Statement; (II) Fixing the Voting Record Date; (III) Approving the Notice and Objection Procedures in Respect of Confirmation of the Plan; (IV) Approving Solicitation Packages and Procedures for Distribution Thereof; (V) Approving the Forms of Ballots and Establishment of Procedures for Voting on the Plan; (VI) Approving the Forms of Notices to Non-Voting Classes Under the Plan; (VII) Fixing the Voting Deadline to Accept or Reject the Plan; and (VIII) Approving Procedures for Vote Tabulations in Connection Therewith [614.pdf](#) at 1, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

Objection of Oakland County Treasurer

On December 12, 2017, the Oakland County Treasurer (the “OCT”) objected to the Modified Plan.⁴⁹⁸ The OCT was the governmental entity responsible for the collection of unpaid property taxes, both real and personal, that were owed to Oakland County, Michigan. The OCT acquired liens on the property of The Limited for unpaid personal property taxes amounting to \$13,249.25. The objection stemmed from Article V of the Modified Plan as that Article treated the OCT’s claim as subordinate to the Class 3 Liberty Mutual Secured Claim.⁴⁹⁹ The OCT claimed that it did not agree to this treatment because it was a first-priority secured creditor in the assets subject to its lien.

Second Modified Contents of Plan

Following further consultation with the Creditors’ Committee, on December 15, 2017, The Limited filed the Second Modified Joint Chapter 11 Plan of Liquidation (the “Second Modified Plan”).⁵⁰⁰ In addition, to filing the Second Modified Plan, The Limited also filed a Memorandum in support of the Second Modified Plan (the “Memorandum”).⁵⁰¹ Timothy Boates, the Chief Restructuring Officer, filed a Declaration supporting the Second Modified Plan (the “Declaration”).⁵⁰²

The following provisions were the only ones altered in the Second Modified Plan.

⁴⁹⁸ Oakland County Treasurer’s Objection to the Modified Joint Chapter 11 Plan of Liquidation of LSC Wind Down, LLC f/k/a Limited Stores Company, LLC and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code [697.pdf](#) at 1, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter OCT Objection].

⁴⁹⁹ *Id.* at 2.

⁵⁰⁰ Second Modified Joint Chapter 11 Plan of Liquidation of LSC Wind Down, LLC f/k/a Limited Stores Company, LLC and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code [700.pdf](#), *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Second Modified Plan of Liquidation].

⁵⁰¹ Memorandum of Law in Support of Second Modified Joint Chapter 11 Plan of Liquidation of LSC Wind Down, LLC f/k/a Limited Stores Company, LLC and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code [704.pdf](#) at 1, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Memorandum of Law].

⁵⁰² Declaration of Timothy D. Boates in Support of Second Modified Joint Chapter 11 Plan of Liquidation of LSC Wind Down, LLC f/k/a Limited Stores Company, LLC and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code [703.pdf](#) at 1, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Declaration in Support of Second Modified Plan of Liquidation].

Article I: Definitions

The Second Modified Plan did not add any entirely new definitions to this Article. It did, however, remove the definitions of “released party” and “releasing parties.”⁵⁰³ These changes will be addressed in the Article IX discussion.

Article V: Provisions for Treatment of Claims and Interests

Classes 1 through 4 and Classes 6 through 9 remained unchanged in the Second Modified Plan. The change came in the Class 5 Priority WARN Claims description. An order had been entered in the WARN action that was pending. Therefore, payments were to be made consistent with the order that was issued in that case.⁵⁰⁴

Article VIII: Provisions Governing Distributions

The only Section in this Article that had an alteration was Section 8.6 governing Uncashed Checks.⁵⁰⁵ Instead of the original provision that provided that a check would be null and void if not cashed within 60 days, the period making a check null and void was expanded to 180 days.

Article IX: Settlement, Release, Injunction and Related Provisions

Sections 9.3 and 9.4 were entirely removed, which explains the reasoning behind the removal of “released party” and “releasing parties” in the definitions Section, as Section 9.3 governed Releases by the Debtors, and Section 9.4 governed Releases by Holders.⁵⁰⁶ Aside from small wording changes, these were the only major changes in this Article.

Basis in Law for Approval of Second Modified Plan

In order for the Second Modified Plan to be confirmed, the court had to determine that the debtors satisfied § 1129 of the Bankruptcy Code.⁵⁰⁷

⁵⁰³ Second Modified Plan of Liquidation, *supra* note 500, [700.pdf](#) at 14–15.

⁵⁰⁴ *Id.* at 19–20.

⁵⁰⁵ *Id.* at 28–31.

⁵⁰⁶ *Id.* at 31–32.

⁵⁰⁷ Memorandum of Law, *supra* 501, [704.pdf](#) at 4.

§1129(a)(1) Requirements

§ 1129(a)(1) provides that a plan must “comply with the applicable provisions of the Bankruptcy Code.”⁵⁰⁸ In order for § 1129(a)(1) to be satisfied, the requirements of §§ 1122 and 1123 of the Bankruptcy Code must be met.

§ 1122 states that a plan may place a claim or an interest in a particular class only if such claim or class is substantially related to other claims or interests of such class.⁵⁰⁹ Each claim was placed in the particular class based on the “legal nature and relative rights” of the claim.⁵¹⁰ Specifically, each Secured Claim was separated from Unsecured Claims, interests were classified separately from Claims, and Secured Claims were classified separately based on their collateral.⁵¹¹

§ 1123(a) sets out seven items that every chapter 11 plan must contain.⁵¹² The Limited asserted that each of these were met. The requirements of § 1123(a)(1) mirror those of § 1122, and The Limited asserted the same reasoning it used for the satisfaction of the requirements of § 1122.⁵¹³ § 1123(a)(2) requires that a plan “specify the treatment of any class of claims or interests that is not impaired under the plan.”⁵¹⁴ The Limited believed that its classification of the Claims and Interests in Article III and Article V met this requirement.⁵¹⁵ § 1123(a)(3) requires a plan to “specify the treatment of any class of claims or interests that is impaired under the plan.”⁵¹⁶ The Limited asserted that its treatment of Impaired Classes in Article V met this requirement.⁵¹⁷ § 1123(a)(4) provides that each claim and interest of a particular class must be treated the same as all other claims in that particular class.⁵¹⁸ The Limited claimed that all holders of Allowed Claims would receive the same rights and treatment as other holders of the

⁵⁰⁸ 11 U.S.C. § 1129 <https://perma.cc/D7DD-BR2Q>.

⁵⁰⁹ 11 U.S.C. § 1122 <https://perma.cc/YQW2-ZZYZ>.

⁵¹⁰ Declaration in Support of Second Modified Plan of Liquidation, *supra* note 502, [703.pdf](#) at 8.

⁵¹¹ Memorandum of Law, *supra* note 501, [704.pdf](#) at 6.

⁵¹² *Id.* at 7.

⁵¹³ 11 U.S.C. § 1123 <https://perma.cc/YYN5-9ZCQ>.

⁵¹⁴ *Id.*

⁵¹⁵ Declaration in Support of Second Modified Plan of Liquidation, *supra* note 502, [703.pdf](#) at 8.

⁵¹⁶ 11 U.S.C. § 1123 <https://perma.cc/YYN5-9ZCQ>.

⁵¹⁷ Memorandum of Law, *supra* note 501, [704.pdf](#) at

⁵¹⁸ 11 U.S.C. § 1123 <https://perma.cc/YYN5-9ZCQ>.

Allowed Claim in each respective class.⁵¹⁹ Next, § 1123(a)(5) calls for the plan to contain “adequate means” for implementation.⁵²⁰ The Limited maintained that Article VI, which provided for the appointment of a Plan Trustee, met this requirement.⁵²¹ § 1126(a)(6) requires “a debtor’s corporation constituent documents [to] prohibit the issuance of non-voting equity securities.”⁵²² The Second Modified Plan did not consider the issuance of non-voting equity securities. Lastly, § 1123(a)(7) requires “the plan’s provisions with respect to the manner of selection of any director, officer or trustee, or any other successor thereto, be consistent with the interests of creditors and equity security holders and with public policy.”⁵²³ Since the Second Modified Plan was a liquidating Plan, no officers or directors existed following the confirmation. Therefore, because the Plan Trustee was responsible for the administration of the Plan, the requirements of § 1123(a)(7) were said to be met.⁵²⁴

Next, the Second Modified Plan must have complied with § 1123(b) of the Bankruptcy Code. § 1123(b) of the Bankruptcy Code contains permissive provisions that may be incorporated into a chapter 11 plan.⁵²⁵ Such provisions include the impairment or unimpairment of classes of claims or interests, the assumption or rejection of executory contracts, the settlement or adjustment of any claim or interest, and all other provisions not inconsistent with the applicable provisions of chapter 11.⁵²⁶ The Limited asserted that the Second Modified Plan was consistent with § 1123(b). In particular, The Limited pointed out that the exculpation and injunction provisions were consistent with the provisions of chapter 11. According to The Limited, because the Second Modified Plan was negotiated in good faith and at arm’s-length, the court should have found the exculpation and injunction provisions were entirely consistent with the provisions of chapter 11.⁵²⁷

⁵¹⁹ Memorandum of Law, *supra* note 501, [704.pdf](#) at 8.

⁵²⁰ 11 U.S.C. § 1123 <https://perma.cc/YYN5-9ZCQ>.

⁵²¹ Declaration in Support of Second Modified Plan of Liquidation, *supra* note 502, [703.pdf](#) at 9.

⁵²² Memorandum of Law, *supra* note 501, [704.pdf](#) at 8.

⁵²³ *Id.* at 8–9.

⁵²⁴ *Id.*

⁵²⁵ *Id.* at 9; *see* 11 U.S.C. § 1123(b) <https://perma.cc/YYN5-9ZCQ>.

⁵²⁶ Memorandum of Law, *supra* note 501, [704.pdf](#) at 9.

⁵²⁷ *Id.* at 11–13.

§ 1129(a)(2) Requirements

Under § 1129(a)(2), the court will only approve a chapter 11 plan if the proponent of the plan—in this case The Limited—complies with the applicable provisions of this title.⁵²⁸ This section requires the debtors to satisfy §§ 1125 and 1126 of the Bankruptcy Code.⁵²⁹

§ 1125 provides that the debtors may not solicit acceptances or rejections of a plan unless a summary of the plan and an adequate written disclosure statement has been provided.⁵³⁰ The Limited claimed that it did not solicit acceptances or rejections of the Second Modified Plan until the court accepted the Modified Disclosure Statement.⁵³¹ Furthermore, The Limited maintained that all parties were put on notice of the confirmation hearing and were provided sufficient information in order to make a fully informed decision on whether to accept the Second Modified Plan.

§ 1126 specifies the requirements for acceptance of a plan.⁵³² This section requires that only holders of allowed claims and interests in impaired classes that will receive distributions be allowed to vote to accept or reject the plan. The Limited asserted that it complied with this section as only those impaired classes who would receive distributions in Classes 3, 5, 6 and 7 were entitled to vote on the Second Modified Plan. And since each of those Classes, with the exception of Class 3 (which did not vote), accepted the Second Modified Plan, The Limited believed the court should have found that it satisfied the requirements in § 1126.⁵³³

§ 1129(a)(3) Requirements

§ 1129(a)(3) requires that a plan be “proposed in good faith and not by any means forbidden by law.”⁵³⁴ The good faith standard requires the plan be “proposed with honesty, good intentions and a basis for expecting that a reorganization can be effected with results consistent

⁵²⁸ 11 U.S.C. § 1129 <https://perma.cc/D7DD-BR2Q>.

⁵²⁹ Memorandum of Law, *supra* note 501, [704.pdf](#) at 14.

⁵³⁰ 11 U.S.C. § 1125 <https://perma.cc/LPW6-TUMR>.

⁵³¹ Memorandum of Law, *supra* note 501, [704.pdf](#) at 15.

⁵³² 11 U.S.C. § 1126 <https://perma.cc/L8UQ-2HL5>.

⁵³³ Memorandum of Law, *supra* note 501, [704.pdf](#) at 18.

⁵³⁴ 11 U.S.C. § 1129(a)(3) <https://perma.cc/D7DD-BR2Q>.

with the objectives and purposes of the Bankruptcy Code.”⁵³⁵ The Limited simply maintained that the Second Modified Plan was proposed in good faith and no illegal means were used.⁵³⁶

§ 1123(a)(4) Requirements

§ 1129(a)(4) requires “any payment made or to be made by the proponent, by the debtor . . . for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to approval of, the court as reasonable.”⁵³⁷ According to The Limited, the court authorized and approved the payment of certain fees and expenses of professionals in the chapter 11 proceedings and thus complied with this provision.

§1129(a)(5) Requirements

§ 1129(a)(5) requires the proponent of the plan to disclose the identity and affiliation of the proposed officers and directors.⁵³⁸ Since the Second Modified Plan was a liquidating plan and there would be no officers or directors after confirmation, The Limited maintained that it complied with this provision.⁵³⁹

§ 1129(a)(6) Requirements

The Limited asserted that this provision did not apply.⁵⁴⁰

§ 1129(a)(7) Requirements

§ 1129(a)(7) is referred to as the “best interests test.” It requires that each holder of an impaired claim or interest either accept the plan or mandates that the holder will receive a distribution that is equal to the amount the holder would receive under a chapter 7 liquidation.⁵⁴¹ Class 8 and Class 9 would not have received any distributions under the Second Modified Plan

⁵³⁵ Memorandum of Law, *supra* note 501, [704.pdf](#) at 19 (quoting *In re Sound Radio, Inc.*, 93 B.R. 849, 853 (Bankr. D. N.J. 1988), *aff’d in part, remanded in part*, 103 B.R. 521 (D.N.J. 1989), *aff’d*, 908 F.2d 964 (3d Cir. 1990)). *See also In re SGL Carbon Corp.*, 200 F.3d 154, 165 (3d Cir. 1999) (finding good faith requires “some relation” between the chapter 11 plan and the “reorganization-related purposes” of chapter 11); *In re Century Glove, Inc.*, 1993 WL 239489, at *4 (D. Del. Feb. 10, 1993) (“[w]here the plan is proposed with the legitimate and honest purpose to reorganize and has a reasonable hope of success, the good faith requirement of section 1129(a)(3) is satisfied”).

⁵³⁶ Declaration in Support of Second Modified Plan of Liquidation, *supra* note 502, [703.pdf](#) at 10.

⁵³⁷ 11 U.S.C. § 1129 <https://perma.cc/D7DD-BR2Q>.

⁵³⁸ 11 U.S.C. § 1129 <https://perma.cc/D7DD-BR2Q>.

⁵³⁹ Memorandum of Law, *supra* note 501, [704.pdf](#) at 21.

⁵⁴⁰ Declaration in Support of Second Modified Plan of Liquidation, *supra* note 502, [703.pdf](#) at 11.

⁵⁴¹ 11 U.S.C. § 1129 <https://perma.cc/D7DD-BR2Q>.

and were deemed to have rejected it. The Limited contended that in a chapter 7 liquidation, Classes 8 and 9 would also not receive any distributions.⁵⁴² The Limited further claimed there would have been additional costs in a chapter 7 liquidation, and these costs would have reduced the amount given to creditors.⁵⁴³ Since The Limited had liquidated all of its assets, a conversion to chapter 7 would not have resulted in increased assets or cash pay to creditors.⁵⁴⁴

§ 1129(a)(8) Requirements

§ 1129(a)(8) requires each class of claims or interest to either accept the plan or be unimpaired under the plan.⁵⁴⁵ While The Limited acknowledged the Second Modified Plan did not conform to this section, it asserted that the Second Modified Plan should have been confirmed because it satisfied §§ 1129(a)(10) and 1129(b) of the Bankruptcy Code, discussed *infra*.⁵⁴⁶

§ 1129(a)(9) Requirements

§ 1129(a)(9) requires entities or people who hold claims entitled to priority to receive specified cash payments under the plan.⁵⁴⁷ Section 4.4, 4.5 and 4.6 of the Second Modified Plan contained provisions calling for the complete payment of the Administrative Claims.⁵⁴⁸ Because the Second Modified Plan contained these provisions, The Limited asserted it had complied with this section.

§ 1129(a)(10) Requirements

§ 1129(a)(10) is an alternative requirement to § 1129(a)(8)'s requirement that each class of claims must either accept the plan or be unimpaired under the plan.⁵⁴⁹ It requires at least one impaired class of claims to accept the plan.⁵⁵⁰ The Limited maintained that it complied with this

⁵⁴² Memorandum of Law, *supra* note 501, [704.pdf](#) at 23.

⁵⁴³ *Id.* at 24.

⁵⁴⁴ *Id.*

⁵⁴⁵ 11 U.S.C. § 1129 <https://perma.cc/D7DD-BR2Q>.

⁵⁴⁶ Declaration in Support of the Second Modified Plan of Liquidation, *supra* note 502, [703.pdf](#) at 14.

⁵⁴⁷ 11 U.S.C. § 1129 <https://perma.cc/D7DD-BR2Q>.

⁵⁴⁸ Memorandum of Law, *supra* note 501, [704.pdf](#) at 26.

⁵⁴⁹ *Id.* at 27.

⁵⁵⁰ 11 U.S.C. § 1129 <https://perma.cc/D7DD-BR2Q>.

section because Classes 5, 6, and 7 were impaired and voted in favor of the Second Modified Plan.⁵⁵¹

§ 1129(a)(11) Requirements

§ 1129(a)(11) requires the court to find that a plan is feasible as a condition precedent to confirmation.⁵⁵² In order to meet the feasibility requirement, it is not necessary for success to be guaranteed—only that the court finds the plan is workable and has a reasonable likelihood of success.⁵⁵³ Under the Second Modified Plan, the remaining assets of The Limited were to be liquidated and distributed to the creditors. Because of this, The Limited believed that it would have sufficient funds to satisfy all obligations and there was likely not a need for further financial reorganization.⁵⁵⁴

§ 1129(a)(12) Requirements

§ 1129(a)(12) requires the payment “of all fees payable under section 1930, as determined by the court at the hearing on confirmation of the plan.”⁵⁵⁵ Since the Second Modified Plan provided that all fees due under 28 U.S.C. § 1930 were to be paid on the Effective Date, The Limited believed the court would find it complied with the provision.

§ 1129(a)(13)-(16) did not apply to the Second Modified Plan as none of those provisions were present.⁵⁵⁶

§ 1129(b) Cram Down Requirements

§ 1129(b) provides that if all applicable requirements of § 1129(a) are met other than § 1129(a)(8), a plan may be confirmed so long as the requirements set forth in § 1129(b) are satisfied.⁵⁵⁷ Since Classes 8 and 9 were deemed to have rejected the Second Modified Plan, The Limited had to show that the Second Modified Plan was fair and equitable with respect to the non-accepting impaired classes.⁵⁵⁸ In order to meet this standard, The Limited was required to

⁵⁵¹ Memorandum of Law, *supra* note 501, [704.pdf](#) at 28.

⁵⁵² 11 U.S.C. § 1129 <https://perma.cc/D7DD-BR2Q>.

⁵⁵³ See *United States v. Energy Res. Co., Inc.*, 495 U.S. 545, 549 (1990); *In re Kaplan*, 104 F.3d at 597; see also *Mercury Cap. Corp. v. Milford Conn. Assocs., L.P.*, 354 B.R. 1, 9 (D. Conn. 2006) (A “‘relatively low threshold of proof’ will satisfy the feasibility requirement.”) (quoting *In re Brotby*, 303 B.R. 177, 191 (B.A.P. 9th Cir. 2003)).

⁵⁵⁴ Memorandum of Law, *supra* note 501, [704.pdf](#) at 30.

⁵⁵⁵ *Id.*

⁵⁵⁶ Declaration in Support of Second Modified Plan of Liquidation, *supra* note 502, [703.pdf](#) at 30. `

⁵⁵⁷ 11 U.S.C. § 1129 <https://perma.cc/D7DD-BR2Q>.

⁵⁵⁸ Memorandum of Law, *supra* note 501, [704.pdf](#) at 31–32.

show that “an impaired rejecting class of claims or interests either be paid in full or that a class junior to the impaired accepting class not receive any distribution under a plan on account of its junior claim or interest.”⁵⁵⁹ Under the Second Modified Plan, there were no claims or interests junior to those in Classes 8 and 9. Because of this, The Limited maintained that the Second Modified Plan’s treatment of claims and interests was proper because each holder of claims and interests was to receive substantially similar treatment.⁵⁶⁰ Thus, The Limited believed the Second Modified Plan should have been confirmed.

§ 1129(c) Requirements

This section requires that a debtor in a chapter 11 proceeding can only file one plan.⁵⁶¹ Since The Limited had only filed the Second Modified Plan, it asserted that it complied with this section.

§1129(d) Requirements

§ 1129(d) states that the principal purpose of the plan cannot be the avoidance of taxes.⁵⁶² The Limited stated that this was not the purpose of the Second Modified Plan, and that it complied with this provision as a result.

Voting on the Plan

As discussed *supra*, holders of Claims in Classes 3, 5, 6 and 7 were entitled to vote to accept or reject the Plan. This was consistent with § 1126 of the Bankruptcy Code which provides that only the holders of claims in classes that are listed as “Impaired” by a plan and are receiving distributions under the plan can vote.⁵⁶³ Under the Second Modified Plan, a claimholder must have timely filed a proof of Claim to vote. In order for a vote to be counted, it

⁵⁵⁹ 11 U.S.C. § 1129(b)(2)(B)(ii); *see also LaSalle*, 526 U.S. at 441-42 (“As to a dissenting class of impaired unsecured creditors, such a plan may be found to be ‘fair and equitable’ only if the allowed value of the claim is to be paid in full, § 1129(b)(2)(B)(i), or, in the alternative, if ‘the holder of any claim or interest that is junior to the claims of such [impaired unsecured] class will not receive or retain under the plan on account of such junior claim or interest any property,’ § 1129(b)(2)(B)(ii). That latter condition is the core of what is known as the ‘absolute priority rule.’”).

⁵⁶⁰ Declaration in Support of the Second Modified Plan of Liquidation, *supra* note 502, [703.pdf](#) at 17.

⁵⁶¹ *Id.* at 18.

⁵⁶² 11 U.S.C. § 1129 <https://perma.cc/D7DD-BR2Q>.

⁵⁶³ Modified Disclosure Statement, *supra* note 463, [606.pdf](#) at 7.

must have been delivered and received by Donlin, Recano by 4:00 p.m. on December 13, 2017.⁵⁶⁴

The final voting results are illustrated by the table below:

CLASSES

TOTAL BALLOTS RECEIVED

	Accept		Reject	
	AMOUNT (% of Amount Voted)	NUMBER (% of Number Voted)	AMOUNT (% of Amount Voted)	NUMBER (% of Number Voted)
Class 3 – Liberty Mutual Secured Claims	\$00.00 (0.00%)	0 (0.00%)	\$00.00 (0.00%)	0 (0.00%)
Class 5 – Priority WARN Claims	\$810,625.00 (100.00%)	1 (100.00%)	\$00.00 (0.00%)	0 (0.00%)
Class 6 – Priority Non-Tax Claims	\$3,939.19 (100.00%)	1 (100.00%)	\$00.00 (0.00%)	0 (0.00%)
Class 7 – General Unsecured Claims	\$47,440,797.41 (99.75%)	196 (98.00%)	\$118,938.70 (0.25%)	4 (2.00%)

In accordance with § 1126(c) of the Bankruptcy Code and Section 12.2 of the Second Modified Plan, the Plan was accepted by at least two-thirds in dollar amount and more than one-

⁵⁶⁴ Declaration of Jung W. Song on Behalf of Donlin, Recano & Company, Regarding Voting and Tabulation of Ballots Accepting and Rejecting Modified Joint Chapter 11 Plan of Liquidation of LSC Wind Down, LLC f/k/a Limited Stores Company, LLC and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code [702.pdf](#) at 4, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Declaration of Jung Song].

half in number of the Allowed Claims of such Classes that had timely and properly voted to accept or reject the Plan.

Final Order of the Court

On December 20, 2017, the court entered an order approving the Second Modified Plan.⁵⁶⁵ The court entered the order on the same basis of law that The Limited asserted in its Memorandum of Law and the Declaration. The court granted The Limited's request that UMB Bank, National Association be designated as the Plan Trustee pursuant to the Plan Trust Agreement.⁵⁶⁶ Further, the court found that any objections to the Second Modified Plan were overruled on the merits.⁵⁶⁷

⁵⁶⁵ Findings of Fact, Conclusions of Law and Order Confirming the Second Modified Joint Chapter 11 Plan of Liquidation of LSC Wind Down, LLC f/k/a Limited Stores Company, LLC and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code [713.pdf](#), *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Final Liquidation Order].

⁵⁶⁶ *Id.* at 24.

⁵⁶⁷ *Id.* at 21.

Final Compensation of Professionals

The following chart shows the respective amounts The Limited paid to various professionals over the course of the chapter 11 proceedings, as well as the total amount paid to these professionals:⁵⁶⁸

⁵⁶⁸ Omnibus Order Approving Final Fee Applications of Professionals [819.pdf](#) at Exhibit A, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017); (*Note*: the Liquidating Trust paid for the professionals retained by the OCC, so the compensation amounts of these professionals are included.)

Professional	Fee Period	Fees Requested	Expenses Requested	Total Approved
<u>Klehr Harrison Harvey Branzberg LLP</u>	1/17/17 – 1/2/18	\$1,005,011.00	\$19,251.97	\$1,005,011.00
<u>KPMG LLP</u> ⁵⁶⁹	6/1/17 – 1/2/18	\$152,712.30	\$55.20	\$152,767.50
<u>Kelley, Drye & Warren LLP</u>	1/24/17 – 1/2/18	\$1,098,558.30	\$13,890.82	\$1,112,449.12
<u>Pachulski Stang Ziehl & Jones LLP</u>	1/24/17 – 1/2/18	\$146,800.50	\$7,455.59	\$154,256.09
<u>CBIZ Accounting, Tax & Advisory of New York, LLC</u>	1/23/17 – 1/2/18	\$521,041.00	\$592.50	\$521,633.50
<u>Donlin, Recano & Company, Inc.</u>	1/17/17 – 1/2/18	\$25,586.00	\$0	\$25,586.00
<u>Guggenheim Securities, LLC</u> ⁵⁷⁰	1/17/17 – 4/1/17	\$1,500,000.00	\$36,030.22	\$1,536,030.22
<u>Totals</u> ⁵⁷¹		<u>\$4,449,709.10</u>	<u>\$77,276.30</u>	<u>\$4,507,733.43</u>

⁵⁶⁹ The Limited originally retained KPMG as an OCP. KPMG began applying for fees in accordance with §§ 330 and 331 of the Bankruptcy Code in June 2017 because its fees began exceeding the \$20,000 limit for OCPs (*See* Final Fee Application of KPMG LLP for Compensation for Services Rendered and Reimbursement of Expenses as Tax Consultants to the Debtors for the Period from June 1, 2017 through January 2, 2018 [792.pdf](#) at 6, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

⁵⁷⁰ Order Granting Final Application of Guggenheim Securities, LLC for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Investment banker for the Debtors and Debtors in Possession for the Period from January 17, 2017 to and Including April 12, 2017 [382.pdf](#), *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017); (*Note*: Guggenheim submitted its final fee application in April 2017. Guggenheim’s compensation is included to give the reader a full understanding of the amount spent on professional compensation.

⁵⁷¹ RAS did not submit monthly fee applications under §§ 330 and 331 of the Bankruptcy Code, so RAS’s compensation is not included in this total amount.

The Limited paid RAS a total of \$826,795 in fees and \$33,645 in expenses from January 17, 2017 to October 28, 2017.⁵⁷²

Post-Confirmation Actions by the Trustee

Avoidance Actions under §§ 547, 548, and 550

The Plan Trustee commenced approximately 73 cases to recover avoidable transfers worth a total of \$16,413,679⁵⁷³ (the “Avoidance Actions”).⁵⁷⁴ Under the Second Modified Plan, the Plan Trustee received the right to prosecute, collect, and/or settle The Limited’s causes of action under §§ 547, 548, and 550 of the Bankruptcy Code. §§ 547 and 548 allow a trustee to avoid “any transfer of an interest of the debtor in property” that constitute a voidable preference or fraudulent transfer.⁵⁷⁵ § 550 allows a trustee to recover the value of property avoided under §§ 547 and 548.⁵⁷⁶

The Plan Trustee alleged that the Avoidance Actions constituted preferential or fraudulent transfers under §§ 547 and 548 and sought recovery of these transfers under § 550.⁵⁷⁷ Additionally, the Trustee asked the court—pursuant to Bankruptcy Rule 7016—to implement certain streamlined procedures to resolve the Avoidance Actions.⁵⁷⁸ Rule 7016 gives courts broad discretion to adopt procedures to increase administrative efficiency. The Plan Trustee asked the court to waive pretrial conferences, refer all the Avoidance Actions to mandatory non-binding mediation, and establish omnibus hearings and general agendas for the same.⁵⁷⁹ The court granted the Plan Trustee’s motion to streamline the proceedings, noting that streamlining the procedures would be in the best interests of all the parties involved.⁵⁸⁰

⁵⁷² Docket No. 288 [288.pdf](#), 355 [355.pdf](#), 420 [420.pdf](#), 465 [465.pdf](#), 490 [490.pdf](#), 512 [512.pdf](#), 542 [542.pdf](#), 569 [569.pdf](#), 601 [601.pdf](#), 670 [670.pdf](#).

⁵⁷³ Docket Entries 898 [898.pdf](#) – 977 [977.pdf](#).

⁵⁷⁴ Plaintiff’s Motion for Orders Establishing Streamlined Procedures Governing Adversary Proceedings Brought by Plaintiff Pursuant to Sections 502, 547, 548 and 550 of the Bankruptcy Code [988.pdf](#) at 5, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017) [hereinafter Motion for Orders Establishing Streamlined Procedures Governing Adversary Proceedings].

⁵⁷⁵ 11 U.S.C. §§ 547 and 548 <https://perma.cc/S75V-C4G4> & <https://perma.cc/W7DX-G4T2>.

⁵⁷⁶ 11 U.S.C. § 550 <https://perma.cc/LNS4-YKLE>.

⁵⁷⁷ Motion for Orders Establishing Streamlined Procedures Governing Adversary Proceedings, *supra* note 574, [988.pdf](#) at 1.

⁵⁷⁸ *Id.* at 6.

⁵⁷⁹ *Id.* at 8.

⁵⁸⁰ Order Establishing Streamlined Procedures Governing Adversary Proceedings with Total In Controversy Greater than \$75,000.00 Brought By Plaintiff Pursuant to Sections 502, 547, 548, and 550 of the Bankruptcy Code [994.pdf](#),

Claims Objections by the Trustee

As discussed *supra*, § 502 of the Bankruptcy Code allows a trustee (or debtor) to object to claims or interests filed under § 501. Sections 6.1(c)(1) and 8.3 of the Second Modified Plan gave the Plan Trustee authority to object to claims filed against The Limited's estate pursuant to § 502.⁵⁸¹ The Plan Trustee objected to duplicative claims, late filed claims, and amended and superseded claims, just as The Limited did earlier in the chapter 11 proceedings.⁵⁸² Additionally, the Plan Trustee objected to certain claims on the basis that these claims failed to provide documentation required by Bankruptcy Rule 3001(c).⁵⁸³ The Plan Trustee asked the court to disallow and expunge each of these claims in its entirety.

No parties responded to the Plan Trustee's objections, and the court disallowed and expunged each of the claims in full.⁵⁸⁴

Fraudulent Conveyance Action against Sun Capital

The Complaint

On January 17, 2019, the Plan Trustee filed an action in the Southern District of Florida seeking avoidance of an alleged fraudulent transfer (the "LBO Complaint") by Sun Capital pursuant to § 544(b) of the Bankruptcy Code.⁵⁸⁵ According to the LBO Complaint, Sun Capital⁵⁸⁶ never paid any consideration to acquire its initial 75% stake in The Limited, other than providing \$50 million in equity capital injected into the company, which it recouped through

In re LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017); Order Establishing Streamlined Procedures Governing Adversary Proceedings with Total in Controversy Less than or Equal to \$75,000.00 Brought by Plaintiff Pursuant to Sections 502, 547, 548 and 550 of the Bankruptcy Code [993.pdf](#), *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

⁵⁸¹ Plan Trustee's First Omnibus (Non-Substantive) Objection to Certain (A) Duplicative Claims; (B) Late Filed Claims; (C) Amended and Superseded Claims; and (D) Insufficient Documentation Claims [979.pdf](#) at 6, *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

⁵⁸² *Id.* at 9–11.

⁵⁸³ *Id.* at 12.

⁵⁸⁴ Order Sustaining Plan Trustee's First Omnibus (Non-Substantive) Objection to Certain (A) Duplicative Claims; (B) Late filed Claims; (C) Amended and Superseded Claims; and (D) Insufficient Documentation Claims (*Note*: the disallowed and expunged claims can be located at Exhibit "A-E" of this document) [984.pdf](#), *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017).

⁵⁸⁵ [Original LBO Complaint](#), *supra* note 16, at 18, UMB Bank v. Sun Capital Partners V, LP, No. 9:19-cv-80074-RLR (S.D. Fla. 2019).

⁵⁸⁶ The LBO complaint names numerous affiliates and partners of Sun Capital Partners, Inc., including Sun Capital Partners V LP, Sun Mod Fashions IV, LLC, Sun Mod Fashions V, LLC, and H.I.G. Sun Partners, Inc. For ease of reference, references to Sun Capital include Sun Capital Partners, Inc. and its affiliates and partners.

cash distributions in February 2010.⁵⁸⁷ The LBO Complaint alleged that Sun Capital obtained the remaining 25% of the company using \$32,000,000 of The Limited’s own funds, rather than any of its own, and, thus effectively acquired 100% of the business for no net capital contributions.⁵⁸⁸ At this point—according to the LBO Complaint—Sun Capital “effectively had no skin in the game” and began draining The Limited’s value.⁵⁸⁹

The LBO Complaint also alleged that Sun Capital used The Limited’s line of credit, its available cash, and a \$35,000,000 loan to make a \$42,158,299.47 distribution on December 20, 2011 (the “Distribution”) to an account held by a Sun Capital affiliate in exchange for no “discernable consideration.”⁵⁹⁰ The LBO Complaint further alleged that the Distribution saddled The Limited with “unnecessary and debilitating debt.” According to the LBO Complaint, the Distribution rendered The Limited insolvent and left its creditors with “little hope of receiving payment.”⁵⁹¹ The LBO Complaint stated that The Limited survived from August 2007 to December 2011 because it had almost no debt and alleged that The Limited had no “reasonable hope of repaying” the \$35,000,000 loan used to pay for the Distribution—much less its other unsecured creditors.⁵⁹² For these reasons, the Plan Trustee alleged that the Distribution “was made with the actual intent to hinder, delay, or defraud creditors of [The Limited],” and sought to recover the \$42,158,299.47 from Sun Capital under § 550 of the Bankruptcy Code.⁵⁹³

If the LBO Complaint prevails, the Plan Trustee would need to first satisfy any outstanding administrative and secured claims prior to paying the judgment. As of December 4th, 2019, these claims totaled \$29,265,154.48 and \$1,640,068.51 respectively.⁵⁹⁴ If the LBO Complaint yields the \$42,158,299.47 prayed for, \$11,253,076.48 would remain after payment of the administrative and secured claims. Next, the Plan Trustee would need to satisfy any outstanding priority claims. These claims totaled \$6,011,759.61 as of December 4th, 2019, thus, after payment of the outstanding priority claims, \$5,241,316.87 would remain. The Plan Trustee would then split the remaining proceeds pro-rata among all unsecured creditors. Unsecured

⁵⁸⁷ [Original LBO Complaint](#), *supra* note 16, at 8.

⁵⁸⁸ *Id.* at 9.

⁵⁸⁹ *Id.* at 9.

⁵⁹⁰ *Id.* at 12.

⁵⁹¹ *Id.* at 15, 17.

⁵⁹² *Id.* at 17.

⁵⁹³ *Id.* at 18–20.

⁵⁹⁴ Register of Claims as of 12/4/2019 [1081.pdf](#), *In re* LSC Wind Down, LLC, No. 17-10124 (KJC) (Bankr. D. Del. Filed Jan. 17, 2017). [Note: the costs of the litigation arising from the LBO Complaint will likely increase the amount of administrative claims.]

creditors had \$250,784,755.19 in outstanding claims as of December 4th, 2019, so the remaining \$5,241,316.87 would be split pro-rata among these various claims.

Sun Capital's Motion to Dismiss the Complaint

On March 18, 2019, Sun Capital filed a motion to dismiss the LBO Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (the “Motion to Dismiss”), alleging that the Plan Trustee failed to file a complaint within the time frame imposed by the four-year statute of repose.⁵⁹⁵ The statute of repose bars actions filed four years after the occurrence of an allegedly fraudulent transfer.⁵⁹⁶ According to the Motion to Dismiss, the Plan Trustee learned of the allegations set forth in the LBO Complaint in December 2017, yet failed to file its complaint within one year of this date of discovery, as required by Florida’s one-year “savings” clause.

The Motion to Dismiss blamed The Limited’s struggles on the consumer migration away from brick-and-mortar stores, rather than “a transaction from over five years prior” to the Petition Date. Sun Capital asserted that The Limited had achieved profitability by 2011 and could afford to take on more debt while paying returns to Sun Capital.⁵⁹⁷ Additionally, Sun Capital alleged that an independent valuation company, Capstone Valuation Services, LLC (“Capstone”), assessed the propriety of issuing the Distribution and found that The Limited was solvent at the time of the distribution.

The main thrust of the Motion to Dismiss was that the Plan Trustee filed the LBO Complaint over seven years after the Distribution took place, well after Florida’s four-year statute of repose. The Motion to Dismiss further alleged that the Plan Trustee knew or should have known about the Distribution well before January 17, 2018 (because of its access to The Limited’s records), and, thus did not qualify for Florida’s one-year “savings” clause as a result.⁵⁹⁸

Sun Capital's Motion to Transfer Venue

On March 18, 2019, Sun Capital also filed a motion to transfer venue pursuant to § 1412 of the Bankruptcy Code (the “Motion to Transfer”).⁵⁹⁹ The Motion to Transfer asked the court to immediately transfer the case to the Delaware bankruptcy court.⁶⁰⁰ 28 U.S.C. § 1412 allows a

⁵⁹⁵ [Defendants' Joint Rule 12\(b\)\(6\) Motion to Dismiss and Incorporated Memorandum of Law in Support](#) at 1, UMB Bank v. Sun Capital Partners V, LP, No. 9:19-cv-80074-RLR (S.D. Fla. 2019).

⁵⁹⁶ *Id.* at 1.

⁵⁹⁷ *Id.* at 4.

⁵⁹⁸ *Id.* at 8–9.

⁵⁹⁹ [Defendants' Joint Motion to Transfer Venue and Incorporated Memorandum of Law in Support](#) at 8, UMB Bank v. Sun Capital Partners V, LP, No. 9:19-cv-80074-RLR (S.D. Fla. 2019) [hereinafter Motion to Transfer].

⁶⁰⁰ *Id.* at 2.

district court to transfer a case or proceeding under title 11 to a district court or another district in the interest of justice or for the convenience of the parties.⁶⁰¹

In arguing that a transfer to the Delaware bankruptcy court would be “in the interest of justice” in this case, Sun Capital cited numerous cases that stated that the court in which a bankruptcy case is pending is the proper venue for all proceedings related to the bankruptcy case because this “home court” has familiarity with the underlying facts and substantive issues of the case.⁶⁰² Sun Capital also cited to case law that stated that the efficient administration of the bankruptcy estate is the most important factor in determining whether a transfer of venue is appropriate.⁶⁰³ Sun Capital argued that, because the Delaware bankruptcy court was currently handling the administration of The Limited estate, a transfer to the Delaware bankruptcy court would result in a more efficient administration of the estate and would allow the court with more familiarity to resolve the remaining issues presented—thus promoting the interest of justice.⁶⁰⁴

Sun Capital also argued that South Florida was a less convenient forum than Delaware for the parties and witnesses to the case.⁶⁰⁵ Sun Capital highlighted the fact that the majority of the parties were incorporated in Delaware,⁶⁰⁶ provided data which showed that the potential witnesses in the case resided, on average, 25% closer to Delaware than Florida,⁶⁰⁷ and asserted that “[n]o matter what group of potential witnesses is considered, Delaware is the more convenient venue for potential witnesses in this case.”⁶⁰⁸

In addition to these two main arguments, Sun Capital also argued that the Plan Trustee chose the Southern District of Florida to gain a tactical advantage⁶⁰⁹ and thus was engaged in forum-shopping.⁶¹⁰ Sun Capital cited to case law to support its assertion that the court should not

⁶⁰¹ [28 U.S.C. § 1412](#).

⁶⁰² [Motion to Transfer](#), *supra* note 599, at 10-12, UMB Bank v. Sun Capital Partners V, LP, No. 9:19-cv-80074-RLR (S.D. Fla. 2019).

⁶⁰³ *Id.* at 10.

⁶⁰⁴ *Id.* at 10-12.

⁶⁰⁵ *Id.* at 14-15.

⁶⁰⁶ *Id.* at 6.

⁶⁰⁷ *Id.* at 14.

⁶⁰⁸ *Id.* at 15.

⁶⁰⁹ The Motion to Transfer seems to imply that the Plan Trustee filed in Florida in an attempt to take advantage of the one-year savings clause discussed above.

⁶¹⁰ [Motion to Transfer](#), *supra* note 599, at 16.

reward forum-shopping, and should, instead, give “diminishing deference” to the Plan Trustee’s choice of venue when ruling on the Motion to Transfer.⁶¹¹

The Plan Trustee’s Response to the Motion to Dismiss

On April 15, 2019, the Plan Trustee filed a response to the Motion to Dismiss, arguing that the LBO Complaint was timely, contrary to Sun Capital’s assertions.⁶¹² Specifically, the Plan Trustee argued that, in analyzing the relevant date for the tolling of Florida’s one-year “savings” clause, the Motion to Dismiss incorrectly focused on when *the Plan Trustee* knew of the Distribution.⁶¹³ According to the Plan Trustee, because 11 U.S.C. § 544 allows a Plan Trustee to “step into the shoes” of any creditor when bringing a fraudulent conveyance action, the relevant date for the tolling of the one-year “savings” clause was when *any creditor* knew of the Distribution.⁶¹⁴ The Plan Trustee further argued that if any creditor lacked knowledge of the Distribution less than one year prior to the Petition Date, then, as of the Petition Date, 11 U.S.C. § 544 gave the Plan Trustee the right to avoid the Distribution on behalf of that creditor.⁶¹⁵ Therefore, the Plan Trustee urged the court to deny the Motion to Dismiss because Sun Capital had not alleged that every single creditor knew of the Distribution at least one year prior to the Petition Date; thus the LBO Complaint was not time-barred.⁶¹⁶

The Plan Trustee’s Response to the Motion to Transfer

On April 15, 2019, the Plan Trustee also filed a response to the Motion to Transfer, asserting that Delaware was not a more convenient forum and that no “efficiencies, judicial or otherwise,” would be gained by transferring the case to Delaware.⁶¹⁷ Particularly, the Plan Trustee argued that, because none of the creditors were named parties to the LBO Complaint, no witnesses or parties to the case were residents of Delaware, and urged the court not to transfer the case to Delaware “based solely on the meaningless fact” that a transfer would result in a single court handling both the bankruptcy case and the LBO Complaint.⁶¹⁸ Furthermore, the Plan

⁶¹¹ *Id.* at 16.

⁶¹² [Plaintiff’s Opposition to Joint Rule 12\(b\)\(6\) Motion to Dismiss and Memorandum of Law in Support](#) at 5, UMB Bank v. Sun Capital Partners V, LP, No. 9:19-cv-80074-RLR (S.D. Fla. 2019).

⁶¹³ *Id.* at 7.

⁶¹⁴ *Id.*

⁶¹⁵ *Id.* at 8.

⁶¹⁶ *Id.* at 9.

⁶¹⁷ [Plaintiff’s Opposition to Defendants’ Joint Motion to Transfer Venue](#) at 2, UMB Bank v. Sun Capital Partners V, LP, No. 9:19-cv-80074-RLR (S.D. Fla. 2019).

⁶¹⁸ *Id.* at 13-14.

Trustee argued that the pending bankruptcy case and the LBO Complaint were “simply not related.”⁶¹⁹ The Plan Trustee also noted that Sun Capital’s principal place of business was in Florida.⁶²⁰ Finally, the Plan Trustee argued that the court should give “great deference”⁶²¹ to the Plan Trustee’s choice of forum and cited case law that stated that “the plaintiff’s choice of forum should not be disturbed unless it is clearly outweighed by other considerations.”⁶²²

Sun Capital’s Reply to the Plan Trustee’s Response to the Motion to Dismiss

Sun Capital filed a reply to the Plan Trustee’s Response to the Motion to Dismiss on April 22, 2019, arguing that Motion to Dismiss should succeed because The Plan Trustee failed to identify any “actual creditor that is not time barred.”⁶²³ Sun Capital cited to case law that stated that the Plan Trustee had to identify a specific creditor or creditors to successfully support its 11 U.S.C. § 544 claim—because the Plan Trustee failed to do so, Sun Capital argued that the LBO Complaint was deficient and thus should not survive the Motion to Dismiss.⁶²⁴

Sun Capital’s Reply to the Plan Trustee’s Response to the Motion to Transfer

Sun Capital also filed a reply to the Plan Trustee’s Response to the Motion to Transfer on April 22, 2019.⁶²⁵ This reply essentially reasserted the arguments that Sun Capital advanced in the Motion to Transfer, but, in response to the Plan Trustee’s assertion that the plaintiff’s choice of forum should receive deference, Sun Capital also asserted that this deference is normally “eviscerated” when the plaintiff’s chosen forum is not its home forum.⁶²⁶

The main thrust of the reply attacked the Plan Trustee’s assertion that none of the parties resided in Delaware, because the creditors were not named in the LBO Complaint; Sun Capital cited case law that stated that when a trustee brings suit as successor to the creditors, “the appropriate residence to be considered is that of the creditors.”⁶²⁷

⁶¹⁹ *Id.* at 11.

⁶²⁰ *Id.* at 19.

⁶²¹ *Id.* at 7.

⁶²² *Id.* at 8.

⁶²³ [Defendants’ Reply in Support of Its Rule 12\(b\)\(6\) Motion to Dismiss](#) at 4, UMB Bank v. Sun Capital Partners V, LP, No. 9:19-cv-80074-RLR (S.D. Fla. 2019).

⁶²⁴ *Id.* at 5.

⁶²⁵ [Defendants’ Reply Memorandum in Support of Joint Motion to Transfer Venue](#), UMB Bank v. Sun Capital Partners V, LP, No. 9:19-cv-80074-RLR (S.D. Fla. 2019).

⁶²⁶ *Id.* at 5.

⁶²⁷ *Id.* at 7.

Order Granting the Motion to Transfer

On June 12, 2019, the court granted the Motion to Transfer and directed the Clerk of the Court to transfer the case to the United States District Court for the District of Delaware.⁶²⁸ The court based its decision on “the substantial connection” that the case had with Delaware.⁶²⁹ Importantly, the court agreed with Sun Capital’s assertion that a transfer to Delaware would result in a more efficient administration of The Limited estate.⁶³⁰ Additionally, the court noted that the bankruptcy case and the case at hand were related and ruled that the Delaware “home court” was the proper venue for resolution of the LBO Complaint.⁶³¹ The United States District Court for the District of Delaware promptly referred the case to the United States Bankruptcy Court for the District of Delaware.⁶³²

Delaware Bankruptcy Court

On January 23, 2020, the court denied the Motion to Dismiss because it found that the facts alleged in the LBO Complaint did not show that the Plan Trustee’s action was time-barred.⁶³³ Specifically, the court decided that the allegations in the LBO Complaint showed that the underlying fraudulent conveyance claim that the Plan Trustee asserted was brought within the applicable statutory timeframe.⁶³⁴ In explaining its reasoning, the court stated that the Plan Trustee adequately “alleged by name numerous unsecured creditors whose standing it is using to pursue the Defendants and has explained why such creditors are governed by the [savings clause].”⁶³⁵

⁶²⁸ [Order Granting Defendants’ Motion to Transfer Venue](#) at 6, UMB Bank v. Sun Capital Partners V, LP, No. 9:19-cv-80074-RLR (S.D. Fla. 2019).

⁶²⁹ *Id.* at 1.

⁶³⁰ *Id.* at 2.

⁶³¹ *Id.* [Note:

⁶³² [Order](#), UMB Bank v. Sun Capital Partners V, LP, No. 1:19-cv-01090-CFC (D. Del. 2019).

⁶³³ [Opinion](#), UMB Bank v. Sun Capital Partners V, LP, No: 19-50272-KBO (Bankr. D. Del. 2020).

⁶³⁴ *Id.* at 7.

⁶³⁵ *Id.*

On February 20, 2020, Sun Capital filed its answer to the LBO Complaint (the “Answer”).⁶³⁶ Sun Capital denied each of the Plan Trustee’s substantive allegations.⁶³⁷ In addition to denying the Plan Trustee’s allegations, Sun Capital also asserted three affirmative defenses, including that the Plan Trustee failed to state a claim upon which relief can be granted, that the Plan Trustee’s claims are barred by reason of waiver, estoppel, or laches, and that the Plan Trustee’s claims are barred by the statute of limitations.⁶³⁸ Additionally, Sun Capital requested that the court enter a judgment dismissing the LBO Complaint with prejudice, a judgment denying all relief requested by the Plan Trustee and granting Sun Capital attorney’s fees and costs in defending against the LBO Complaint, and any other relief that the court deems just and equitable.⁶³⁹

At the time of this writing, the parties were conducting discovery.

Where is The Limited Today?

“The Limited”⁶⁴⁰ lives on in name only (“The Limited 2.0”), as the Purchaser sells Women’s clothing and related merchandise using an e-commerce website with the URL “www.TheLimited.com.”⁶⁴¹ The Limited 2.0 offers expanded sizing not historically offered by “The Limited,” such as plus, tall, and petite.⁶⁴² The Purchaser also sells The Limited 2.0’s products through Belk, a large department store chain.⁶⁴³ Belk is the exclusive carrier of The Limited 2.0’s products and sells these products both online and in Belk stores.⁶⁴⁴

⁶³⁶ [Defendants’ Answer to Complaint and Affirmative Defenses](#), UMB Bank v. Sun Capital Partners V, LP, No: 19-50272-KBO (Bankr. D. Del. 2020).

⁶³⁷ *Id.*

⁶³⁸ *Id.* at 27.

⁶³⁹ *Id.*

⁶⁴⁰ *Note:* The entity that is referred to as The Limited throughout this paper was still tying up loose ends in its chapter 11 proceedings at the time of this writing. This section discusses the trade name, “The Limited,” as operated by the Purchaser, Sycamore Partners.

⁶⁴¹ The Limited, LLC, www.TheLimited.com (last visited Apr. 30, 2020), <https://perma.cc/A9AE-E8YW>.

⁶⁴² Daphne Howland, *Belk Grabs The Limited as Exclusive Label*, RETAIL DIVE (Last visited Apr. 30, 2020), <https://www.retaildive.com/news/belk-grabs-the-limited-as-exclusive-label/512368/>, <https://perma.cc/YUS9-DLKH>.

⁶⁴³ belk, <https://www.belk.com/shop-by-brand/belk-exclusives/the-limited/> (last visited Apr. 30, 2020), <https://perma.cc/CT56-38MY>.

⁶⁴⁴ Howland, *supra* note 642.

After the Purchaser acquired the Sale Assets in February 2017, it brought The Limited 2.0 into the online marketplace in August 2017.⁶⁴⁵ Antony Karabus, CEO of the retail consulting firm HRC Retail Advisory, endorsed this decision, stating that The Limited 2.0 can make a comeback if it keeps up with trends and stays loyal to “their heritage of who their customer is.”⁶⁴⁶ Four months later, Belk agreed to partner with The Limited 2.0 as its exclusive retailer.⁶⁴⁷

While The Limited 2.0’s website continues to operate at the time of writing this paper, and its venture with a retailer as large as Belk implies a comeback, the extent of the Purchaser’s success in its attempt to bring “The Limited” back to life remains unclear.

⁶⁴⁵ Matt Lindner, *The Limited returns as an online-only brand*, DIGITAL COMMERCE 360 (Last Visited Apr. 30, 2020), <https://www.digitalcommerce360.com/2017/10/19/the-limited-relaunch-online-only/>, <https://perma.cc/Z4LT-JV7Z>

⁶⁴⁶ *Id.*

⁶⁴⁷ Howland, *supra* note 642.